ESSAYS IN TAXATION

ESSAYS IN TAXATION

BY

EDWIN R. A. SELIGMAN
PROFESSOR OF POLITICAL ECONOMY AND FINANCE
COLUMBIA UNIVERSITY

FIFTH EDITION

New York
PRINTED FOR THE COLUMBIA UNIVERSITY PRESS BY
THE MACMILLAN COMPANY
LONDON: MACMILLAN & CO., LTD.
1905

Set up and electrotyped October, 1895. Reprinted September, 1897; April, 1900; July, 1903; May, 1905.

Norwood Press
J. S. Cushing & Co. — Berwick & Smith
Norwood Mass. U.S.A.

PREFACE TO THE THIRD EDITION

The period of two years that elapsed between the first and the second editions of this work was so short as to call for only a few minor corrections and alterations. After a further interval of two and a half years, the third edition now appears. During this period there have been many changes in detail in the tax laws of the United States as well as of Europe. But nothing has occurred of sufficient importance in principle to require any serious modification of the views originally expressed. The alterations in the present edition are, therefore, confined to relatively unimportant matters, as any attempt to bring all the facts of American taxation down to date would have necessitated an entire rewriting of a large part of the work. It is only in Chapter V. that the requisite changes have been made. In the remainder of the book, unless expressly stated to the contrary, the facts as given are those that existed at the time of the first edition. If a future edition should be called for, it is hoped that the discussion may be brought down to date.

EDWIN R. A. SELIGMAN.

Columbia University, New York,
March, 1900.

PREFACE TO THE FIRST EDITION

Of the essays published in this volume about one-half are new. The others have already appeared during the past five years in various scientific periodicals, like the *Political Science Quarterly*, *Quarterly Journal of Economics*, *Yale Review* and *Journal of the Social Science Association*, but have been revised and brought down to date. Although nominally disconnected, the essays, new and old, which are here printed, will, I trust, be found not to be entirely lacking in continuity, or unworthy of the more permanent form which they now assume. Although they were written primarily from the American point of view, I venture to hope that the discussions of theory may prove to be of a wider interest.

Several colleagues and other friends have aided me with advice and encouragement. But special acknowledgments are due to Mr. Max West, Ph.D., lecturer on taxation and finance in Columbia College, and to Mr. Arthur M. Day, A.M., assistant in political economy and social science in Columbia College, for the painstaking care with which they have read the proofsheets, and for the many suggestions, as to both matter and form, which they have been kind enough to make. For the index Dr. West is responsible.

Bellagio, Italy, September, 1895.

CONTENTS

CHAPTER I.

CHAPTER II.

CHAPTER III.

CHAPTER IX.

CHAPTER X.

CHAPTER XI.

CHAPTER XII.

CHAPTER XIII.

ESSAYS IN TAXATION.

CHAPTER I.

THE DEVELOPMENT OF TAXATION.

To the citizen of the modern state, taxation, however disagreeable it may be, seems natural. It is difficult to realize that it is essentially a recent growth and that it marks a comparatively late stage in the development of public revenue; it is more difficult to realize that each age has its own system of public revenue, and that the taxes of to-day are different from those of former times; it is still more difficult to perceive that our ideals of justice in taxation change with the alteration in social conditions. Not only the actual forms of taxation, but the theories of taxation as well, vary with the economic basis of society. Fiscal conditions are always an outcome of economic relations. This is true even where the direct influence of political causes is traceable, for political changes are in the last resort dependent on economic changes. Finance and economics are inextricably intertwined. Like all the facts of social life, taxation itself is only an historical category.

I. *Voluntary and Compulsory Payments.*

At the beginning of history there is no such thing as a state. Whether we accept Hobbes' theory of the *bellum omnium contra omnes*, or the more modern clan theory of

the origin of society, there is no public household, because there are no recognized public needs. But even in the original man there are possibilities of social development. Man, as Aristotle tells us, is a social and political animal. Centuries of hard experience strengthen the social instinct and contribute to form primitive society, until finally a real political life emerges.

Gradually from either physical, ethical or religious reasons a leader evolves. The oldest or the wisest or the bravest — at all events, the one possessed of some peculiar characteristic — becomes the leader of the horde, the clan or the tribe. He acts as the great priest, great judge or great warrior, often combining all three qualities. There are no financial needs, because the only consideration is that of defence; and every man contributes to the defence in his own person. The leader himself subsists on the booty of war.

But with the growth of society and the expansion of the clan into the larger community, the public needs develop. Administration begins. Roads, bridges and fortifications are constructed, and the prince or king must now not only maintain order, but must be assured of a revenue to support his household and to distribute favors to his retinue. All his followers, being roughly equal, now support him by gifts, whether of labor or of property. In all primitive societies voluntary offerings constitute the first form of common contributions, and every man feels the necessity of upholding the political and military organization by his own personal efforts.

The king's needs now increase. They are chiefly personal needs, except in so far as expenditures are made for the purposes of internal peace and external defence. But in order to ensure his position, the king endeavors to secure his revenues elsewhere. He develops the subsidies and tributes of the allied and conquered nations, and amasses treasure filched from abroad. Part of this he distributes among his followers; part he retains to increase

his own possessions. The private property of the king differentiates itself from the public property, which was originally common to all. The monarch now increases his revenues and domains through the acquisition of lucrative prerogatives of all kinds. Certain activities come to be looked upon as within his peculiar province. The king's peace must be kept — any infraction must be paid for in fines and penalties; not only crimes, but torts, have their public side. Nobody can harm an individual without breaking the king's peace, and having to pay for it. Commerce begins, and weights and measures and money are needed. The royal rights of coinage arise; and as the kingship becomes stronger, the rights of escheat, of wreck, of confiscation develop, until finally the various royal prerogatives bring in a substantial revenue.

Voluntary payments have in the meantime ceased. As society advances, what was at the outset freely given comes to be paid by the individual from a sense of moral obligation. But with the weakness of human nature, in the face of a diversity of interests, even the feeling of duty soon fails to produce an adequate revenue. The moral obligation slowly becomes a legal obligation, keeping pace with the crystallization of social usage and custom into primitive law; the voluntary offerings become compulsory contributions. But the compulsory contributions are still largely personal services, connected with the common security. Such was the early mediæval *trinoda necessitas*, the liability to military service, to watch and ward, and to the repair of the bridges and fortifications. The first forced contribution of the individual to the maintenance of the common welfare is always seen in this rude attempt to assess every one according to his ability to bear the common burden — his faculty. This faculty consists in the enforced participation in the administration. But there is not yet any idea of taxation of property. The contribution is personal, and is limited to a few well-defined objects. The individual's faculty is found in his person, not in his property, because there is practically no private prop-

erty. And the contributions are, for the most part, not regular, but spasmodic.

As civilization gradually advances, private property develops, and the primitive equality slowly disappears. The interchange of commodities takes place on a larger scale. The old revenues are no longer adequate, and it becomes necessary for the monarch to supplement them by broadening the field of these compulsory contributions of service. In other words, the need of taxation arises. But a direct tax is still out of the question. Public opinion will not yet admit its necessity. The taxation of property is scarcely less impossible than the taxation of the person. It is regarded as a badge of disgrace for the freeman — a *nota captivitatis*, as the Romans at first called it —, because only conquered enemies have to pay this arbitrary impost. The king, therefore, must endeavor to effect his object covertly. He must go to work in a roundabout way, and hide the tax in a variety of disguises. He either gradually extends his lucrative prerogatives, or alleges that the charges are simple returns for governmental services. He grants protection or privileges to individuals, and requires some payment in return. Thus begins the period of fees and charges, which the individuals are willing to pay and which gradually reconcile the public to the idea of governmental charges.

But before long the monarch feels able to throw off all disguises, and limits the amount of his exactions only by the degree of his rapacity. Thus the fees and tolls change into taxes on exchange and transportation; thus the people become accustomed to the "customs"; thus the "evil duties" and the excises grow apace; thus the payments become veritable "impositions." In other words, the community enters upon the stage of indirect taxation.

This explains why it is so difficult for the idea of direct taxation to force its way into popular favor. The earliest manifestations of the taxing power are generally merciless and brutal. They are apt to react on the public consciousness and to stunt the growth of any feeling of obligation. It is

economic basis of the poll tax has entirely vanished and it tends to be replaced by the property tax.

The first property taxes are entirely in harmony with the facts of early industrial life. It is a matter of common knowledge that the early period of every civilization is marked by two chief facts, the almost exclusive preponderance of agriculture and the existence of slavery. As Rodbertus has pointed out,[1] this leads to a fundamental distinction between ancient and modern economic theories. In modern civilization we have not only a quantitative division in wealth, but also a qualitative difference. That is, not only are there rich and poor, but there are landowners, capitalists, employers and laborers. In early civilization there was a quantitative but no qualitative distinction in wealth. All property consisted simply of land and the landowner's household, including slaves and beasts of burden. There was no important capital apart from this landed property, and hence there were no distinct shares in distribution. But Rodbertus errs in confining to Greece and designating by the Greek name an economic system which is characteristic of all early civilizations. It was as true of the slave-holding states in the American Union, and of the mediæval manorial system, as it was of the Hellenic civilization. Wherever we find only agriculture and slavery, there we have this inseparable mass of collective property, not yet split up into its constituent parts.

The importance of this for finance lies here: since we have only this general collective property, and since this property consists practically of land and the means to till the land, the direct property tax must take the shape either of the land tax or of the tax on the cattle or slaves or implements used in agriculture. These are practically tantamount to each other. For the produce of two given portions of land will vary about in proportion to the value of the land,

[1] "Untersuchungen auf dem Gebiete der Nationalökonomie des klassischen Alterthums," in Hildebrand's *Jahrbücher für Nationalökonomie und Statistik*, iv., p. 343 *et seq.*

together with the amount of slaves and cattle necessary to till it. Everywhere at first, therefore, the direct property tax is found to be either the land tax or the tax on agricultural capital.[1] It is the only practicable and the only just form of taxation at this early period.

But it is important to notice that the property which is now taxed is not so much property in land as property in the produce of land. Whether we have the primitive village community or only the system of common cultivation, the earliest private property consists of the produce of the soil. The first attempt, therefore, to take account of the gradations in the tax-paying ability of the individual is seen in the tax on gross produce — the tithe or any other portion of the produce —, or on mere quantity of the land irrespective of value. Since land itself is not private property, since land is not bought or sold, the faculty of the taxpayer can be measured not by the value of the land, but by the value of its produce, which is in some proportion to the quantity of the land. Moreover, in early agriculture, where tilling is extensive and where expenses of cultivation vary but little, the tax on gross produce is a fairly accurate test of ability to pay.

With the advance in population and the necessity of more intensive agricultural methods, owing to the decay of the primitive communal system and the growth of private property in land, it becomes possible to measure the productivity of land in terms of property. Thus the land taxes of this newer stage of culture are property taxes, even though the value of the property is fixed sometimes according to selling value, sometimes according to arbitrary estimates of quality. But where the survivals of primitive conditions are strong, the value is still measured in terms of yield or produce, either actual or computed. In the early middle ages, for instance, land taxes were not based directly on the selling value, because, although land was private property,

[1] In some of the early mediæval tax systems, these were specifically termed cattle and land taxes. So the *Vieh- und Klauensteuer* in Germany.

it was not bought or sold. The lands had rental value, but no selling value, and the tax was assessed not so much on the market value as on the produce of land. When the American colonies were founded, private property in land was well established and the land taxes there very soon became property taxes, although we not infrequently find examples of the taxation of gross produce rather than of property.[1] With the progress of cultivation and the advance in population, the tax on gross produce is supplanted by the property tax on market value.

But now comes a change in the forms of economic life — a change that inevitably produces an effect on the public conscience and on the accepted ideas of justice. In the first place, with increasing prosperity we find a gradual increase in the simpler kinds of personal property. The landowner's family gradually accumulates money, clothing and luxuries. If the general property tax is still to continue a fair evidence of individual ability to pay, personal property must be taken up into the assessment lists. And this, in fact, everywhere occurs. Not only the real estate, but also the growing personal estate, is now regarded. At first this personalty will consist of tangible, visible objects not easily concealed, and constituting a fair index of the citizen's prosperity. The existence of this scanty stock of personalty will, however, still be in harmony with the early economic system. It is still the landowner who owns the personal property, and it is fitting that there should still be only the general property tax. The economic system has not yet materially altered.

The next change, however, inaugurates a widely different stage. The primitive family group or manorial system decays. Slavery is gradually broken down by manumission or abolition. The commercial instinct grows stronger, and trade is no longer limited to the interchange of superfluities between adjacent households. What Aristotle de-

[1] For details see my article on "Income Taxes in the American Colonies," *Political Science Quarterly*, x. 1895, pp. 233, 234.

cries as the gainful pursuits become common occupations. Capital develops and free laborers appear. The original undifferentiated mass of property splits up into separate parts. The landlord is no longer the property lord. Personal property, in the shape both of productive capital and of unproductive wealth, increases at a continually accelerating ratio. Finally, as in our modern industrial system, the movables outrank the immovables. Realty is completely overshadowed by personalty, in both extent and influence.

Now begins the contest between the landed and the moneyed interest, between rent and profit. The landowners in mediæval times, like the farmers in our own time, vainly attempt to expand the original property tax so as to include all these new forms of property. The capitalist and moneyed class either seek to shift the burden by devising the indirect tax of which we have spoken above, or they attempt to escape the burden entirely through evasion or through lax administration of the property tax. Where the differences in wealth become striking and the lower classes are politically powerless, the landed proprietors and the traders combine to throw the burden on the agricultural laborers and the urban artisans, although they may still struggle between themselves as to the division of the remainder of the burden. Where aristocratic conditions prevail less strongly, as in America up to the present time, the laborer fares better, but the contest between the farmer and the city resident assumes a more acute form. The history of modern taxation is largely the history of these class antagonisms.

IV. *Changes in the Basis of Taxation.*

In the meantime the test or standard of individual ability has itself undergone a change. With the growing differentiation of society, the productive powers of the various classes themselves differ. Moreover, there are now many forms of earnings which are derived not from property but from industry. And since it is difficult to capitalize industry, it

is the product of the industry which now becomes of importance. But there is a decided difference between this new system of taxes on product, and the original system which preceded the first property tax. In the original system the tax was on gross produce or on mere quantity of land. The land tax was either the tithe or some definite part of the estimated produce. Now the tax is on net produce. Allowance is made for expenses of cultivation. Two pieces of land may yield the same amount, and yet the outlay in the one case may have been considerably more than the other. To take net, instead of gross, product marks another step forward in the evolution of the idea of ability to pay. In a state of complete mobility of capital and labor, it perhaps makes no difference whether we take the market value or the net product of a piece of property; for the selling price of property tends to equal the capitalized value of the revenue derived therefrom. But in actual life, where we often find limitations to this absolute mobility, there may be a divergence between the capitalized value of the produce and the actual value of the property. Thus we find almost everywhere a movement to replace the property tax by a system of taxes on net product — on the product of land, of capital, of business, of labor, *etc.* This was the stage reached in Europe toward the end of the eighteenth and the beginning of the nineteenth century.

Relatively good as this system was, it was soon seen not to be entirely satisfactory. It failed to respond to modern economic conditions. It looked at the produce of the source of industry, rather than at the recipient of the earnings; it was a tax on things, rather than on persons; it abstracted from the personal situation of the taxpayer; it made no allowance for indebtedness. Just as the tax on gross produce was defective because it paid no attention to expenses of cultivation, so the tax on net produce, while in itself an improvement, was nevertheless faulty because it paid no attention to what may be called the personal expenses of cultivation, *i.e.* the interest on indebtedness.

Thus it is that in recent decades the tendency has arisen to substitute personal taxes for the older real taxes, and to assess the individual rather than the thing; or, stating it in simpler language, to put revenue or income in the place of proceeds or earnings as the test of taxation. Just as a man's ability to support himself or his family is seen in his income or revenue, so, in the same way, it is recognized that the test of a man's ability to support the state is to be found in this same income or revenue. From the modern point of view, it is the duty of the citizen to support the government according to his capacity to support himself. Income or revenue may not, indeed, be an ideal test; for there is no absolute test which can exactly gauge all the varying personal circumstances of each individual. But it is the best workable test that governments can secure, and it is in harmony with the test imposed on the individual by the force of social opinion in regard to his duty to his own family. For this reason modern states are everywhere changing their revenue systems, so that the taxes shall correspond, as nearly as possible, to the revenues of the citizens. This is the last step in the evolution. But precisely because it is a personal tax, rather than a tax on things, it involves administrative difficulties and presupposes a definite stage of social morality and political probity. Where this stage has not yet been reached, it may be better to continue the system of taxes on product which form a very rough approximation to the revenue of the taxpayer, than to attempt a system of income taxes which strives to reach the revenue more closely. But whatever may be the momentary demand of expediency, the line of development is evident, and the ultimate result must necessarily harmonize with the facts of economic and social relations.

Let us test the theory of development as laid down in the above pages by a reference to the history of taxation in America. It is well known that the primitive revenues of the colonies were composed largely of voluntary payments, of subsidies or allowances from abroad, of quit-rents, and

of occasional fees and fines of early justice. But it has usually been overlooked that when the voluntary offerings turned into compulsory contributions, the tax systems in the various colonies were quite different.

The New England colonies were democratic communities where almost every one owned some land, and where the distribution of property was fairly equal. We therefore find as a characteristic mark of New England, in addition to the primitive poll tax, the tax on the gross produce of land either actual or computed according to the quantity or quality of the land. This slowly grew into a real property tax, which soon expanded into what was nominally a general property tax. And this itself was supplemented by a tax on town artisans and others who subsisted on the produce not of their property, but of their exertions. To the property tax was now added the "faculty" tax.

In the Southern colonies, which were aristocratic in their economic substratum, the land tax played an insignificant rôle, because the large landowners naturally objected to bearing the burdens. After the introduction of slavery it became difficult to retain even the poll tax, which when laid on slaves is practically a property tax on the slave owner. Hence we see a system of indirect taxes, mainly on exports and imports, falling with special weight on the poorer consumers.

Finally, in the middle colonies, above all in New Netherland, the conditions were neither democratic nor aristocratic. There was no such approach to equal distribution of wealth as in New England, and no such preponderance of the landed interest as in Virginia. We find the dominance of the moneyed interest or of the trading classes, who brought with them Dutch instincts and Dutch methods. Accordingly, there was no system of poll and property taxes as in New England, and no system of indirect taxes on exports and imports as in Virginia. The fundamental characteristic of this system was the introduction of the excise system or indirect taxation of trade, which was borrowed from Holland, just as we find the

excise system introduced from Holland into England and the other European countries during the seventeenth century. Each section, therefore, had a fiscal system more or less in harmony with its economic conditions. It was not until these conditions changed during the eighteenth century that the fiscal systems began somewhat to approach each other; and it was not until much later that we find throughout the country a general property tax, based not on the produce, but on the market value of the property.

The same divergence of economic conditions explains what is to-day the most marked distinction in the United States between the fiscal systems of the North, the South and the West. In the Southern states up to the civil war, the interests of the large landed proprietors were still dominant. Under the federal constitution, it was impossible for them to levy import or export duties. For a time, therefore, land, as the only source of wealth, had to defray the public charges. In the absence of industrial centres, there was little opportunity for taxation of personal property. As the need of increased revenues was felt, the landed interests attempted to secure this revenue from the few ordinary occupations carried on outside of the farms and estates. In other words, the license or privilege system was established, which levied a fixed charge on well-nigh every occupation. It was not until after the middle of the century that the general property tax was introduced; but even to-day the license or privilege taxes yield a large share of the public revenue.

In the Northern states, on the other hand, where the business interests were more powerful, the license or privilege system never attained such a firm foothold. But with the breakdown of the general property tax, the attempt of the general public to secure a taxation of the moneyed interests has taken the form of taxation of corporations and of capital. There are plainly visible the beginnings of a system of taxation of net product. Finally, in the Western states, where the economic conditions are as yet more primitive, there

have been only sporadic attempts to alter the general property tax, which there is still to a great extent a tax on real estate. But with the gradual unification of economic conditions, which is slowly taking place throughout the entire country, we may expect that the systems of taxation will become more nearly uniform, until the results of modern industrial and democratic development will finally appear here, as they are appearing in other parts of the world. The recent attempt to introduce a federal income tax, however defective the measure may have been, is a significant evidence of the trend. That this attempt will ultimately be followed by others, not necessarily precisely similar, but yet indicative of the same general movement, is by no means improbable.

From the above survey one fact stands out prominently. Amid the clashing of divergent interests, and the endeavor of each social class to roll off the burden of taxation on some other class, we discern the slow and laborious growth of standards of justice in taxation, and the attempt on the part of the community as a whole to realize this justice. The history of finance, in other words, shows the evolution of the principle of faculty or ability in taxation — the principle that each individual should be held to help the state in proportion to his ability to help himself. In the earliest indirect payments there was no idea of equity, but only of force. But with the advance of civilization and social ethics, we reach the first stage of rude equality in the poll tax. Step by step the revenue system advanced to successively higher planes. Expenditure, property, product — each of these in turn was considered the test of individual capacity and obligation toward the state; until finally in modern times revenue or income has come to be regarded as the most equitable and the most practicable measure of individual and social faculty. To arrange a system of taxation which shall, on the whole, correspond as closely as possible to the net revenues of individuals and social classes, and which shall take into

account the variations in tax-paying ability, has thus become the demand of modern civilization. But unless this system is in harmony with the external structure and the internal conditions of modern economic life, it is foredoomed to failure. If the history of taxation teaches any one lesson, it is that all social and moral advance is the result of a slow process and that while fiscal systems are continually modified by the working out of ethical ideals, these ideals themselves depend for their realization upon the economic forces which are continually transforming the face of human society.

CHAPTER II.

THE GENERAL PROPERTY TAX.

There is perhaps no single feature of our modern tax system that is commonly thought to be more thoroughly American than the general property tax. The proportional taxation of all property is held to be the result of an instinctive feeling original to and thoroughly ingrained in the minds of the American people. And yet it may be said that few institutions have evoked of late more angry protests and more earnest dissatisfaction than this very tax. The reason is plain. As long as prosperity was general and the public expenses were small, taxation was light and its burden was scarcely felt. But during the last few decades, with the complicated demands of modern civilization, public expenditures, both local and national, have increased to such an extent as to exert a sensible pressure on the population. The problems of public revenue have been pushed to the front. The expressions of discontent with various phases of the financial system have become numerous and loud. But for the most part the discussion has been superficial and the conclusions reached have been inadequate.

The opponents of the general property tax have confined themselves to a portrayal of its practical shortcomings. No one has hitherto attempted to give the deeper reasons why the property tax is unsuited to the present generation, or to discuss the subject in its wider relations to the science of finance. It is proposed in this chapter to show that the property tax is by no means original to America, but that it has gone through precisely the same evolution in many other places. It is further proposed to prove that the property tax is as

destitute of theoretical justification as it is defective in its practical application. And it is proposed, finally, to discuss the reforms of our direct taxation — some of them partly completed, some projected, and some hitherto neglected.

I. *Practical Defects.*

The defects of the general property tax may be treated under five heads.[1]

1. *Lack of uniformity*, or inequality of assessment. The property tax with us is an apportioned, not a percentage tax. According to the latter method, the tax would be levied on the individual taxpayer by means of a fixed rate or percentage of all property. According to the actual method, the total amount to be raised by the state is first ascertained and is then apportioned to the various subdivisions according to the appraised valuation in each. The final rate of taxation is obtained by adding the local tax to the state tax. The rate of taxation ought therefore to vary only with the local needs, and would indeed so vary if property were everywhere assessed uniformly. As an actual fact, however, this is far from being the case. In most of the commonwealths the tax laws provide for the assessment of property at its "fair cash value." And in all the states it is expected that the valuation shall everywhere be made at a uniform rate. Yet it is a notorious fact that in scarcely any two contiguous counties is the property — even the real estate — appraised in the same manner or at the same rate. In regard to the manner, it frequently happens that corporation prop-

[1] In a monograph by the present writer entitled *Finance Statistics of the American Commonwealths* (Publications of the American Statistical Association, Dec. 1889) may be found a large number of citations from the commonwealth financial reports for the preceding year. The reader is referred to that publication for the verification of statements for which no special authority is adduced in these pages. See especially pp. 401–417. Many facts and figures may also be found in Ely, *Taxation in American States and Cities*, 1887. See also, for some striking statistics, T. G. Shearman, *Taxation of Personal Property, impracticable, unequal and unjust*, 1895.

erty, *e.g.* the roadbed of a railway, is assessed in one county at an immense sum per mile and is treated in the adjacent county like a piece of grazing land.[1] In regard to the rate, the assessors follow the practice sanctioned by local usage, or decide by mere caprice. The official reports abound with complaints or open confessions that property is assessed all the way from par to one twenty-fifth of the actual value. In one county the property is listed at its full worth ; in the next county the assessment does not exceed a tithe of its value.[2] That this is a glaring infraction of the fundamental rule of equality in taxation is apparent. As between counties it leads to undervaluations which give an entirely fallacious view of the public resources; as between individuals it results in gross injustice. A tax rate of a given amount on one may be double, quintuple, or decuple the nominally equivalent tax on another. The first constitutional injunction — that of uniformity of taxation — is flagrantly violated. Assessors are compelled openly to disregard their oaths, or to incur certain defeat at the next election.[3] There is no pretence of complying with the law.

An escape from these evils has been sought in the creation of boards of equalization. A number of commonwealths[4] have attempted to correct the undervaluation of

[1] In New York, for example, two adjoining counties made a difference of $24,000 per mile in assessing the same railroad. Other counties varied $20,000 per mile. *Report of the State Assessors*, 1879, p. 19.

[2] *Biennial Report of the Auditor of Public Accounts of Nebraska*, 1886, p. 4. In New York the range is from 100 to 18 per cent. *Report of the State Assessors*, 1883, p. 3. In Illinois the range is from 100 to 5 per cent. *Report of the Revenue Commission of Illinois*, 1886, p. ii.

[3] *Report of the State Assessors of New York*, 1886, p. 20. The report for 1884, p. 4, speaks of the assessors' open "intent to ignore the law." In one case an assessor objected to a certain declaration, and asserted that it would be necessary to swear the merchant. The latter answered : "If you swear me, I'll vote against you next time." *West Virginia Tax Commission, Preliminary Report*, 1884, p. 13.

[4] Boards of equalization are found in Arizona, California, Connecticut, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oregon, South Carolina, South Dakota, Tennessee,

the county officials by giving a state board power to raise or lower the valuations (or in some cases the rates) in the hope of securing a substantial uniformity. In a few states, like South Carolina and New York, the power extends only to the equalization of real estate assessments. In some cases, as in Illinois, New Jersey, New Mexico and Tennessee, the board may change the valuations of individuals also. But in most cases its function is confined to the equalization of county assessments, while the county boards deal with assessments of individuals. These efforts, however, have been very imperfectly successful. The composition of the boards is such as to render any comprehensive scrutiny of the county returns almost impossible. Even were the boards to be ideally constituted the local jealousies and bickerings would still continue to prevent any just distribution of the burdens.[1] The officials themselves confess that such distribution cannot be secured under the present system.[2] Boards of equalization are thus at best mere makeshifts, — clumsy attempts to accomplish the impossible. As it has been drastically put: "A people cannot prosper whose officers either work or tell lies. There is not an assessment roll now made out in this state that does not both tell and work lies."[3] As long as this is true, boards of equalization are of little avail.

Utah, Washington, Wisconsin and Wyoming. In some states the boards of equalization have to deal only with the assessment of corporate property. So in Alabama, Colorado and Maryland. County boards of equalization exist in most of the states, even when state boards are unknown.

[1] "The strife between counties to reduce assessments has not ceased and in all probability will not, as long as assessors are elected, or selfishness be a passion in the human breast." *Report of the California State Board of Equalization*, 1885 and 1886, p. 4.

[2] "No board of officials, however diligent or however conversant they may be with the subject, can make an equalization which to themselves will be absolutely satisfactory." *Annual Report of State Assessors of New York*, 1887, p. ii. From ocean to ocean the same complaint is found.

[3] M. I. Townsend, in *Proceedings and Debates of the Constitutional Convention of New York*, 1867–68, iii., p. 1945. *Cf.* the first *Report of the (New York) Commissioners to revise the Laws for the Assessment and Collection of Taxes*, 1871, p. 33.

2. *Lack of universality*, or failure to reach personal property. This defect although the most flagrant, perhaps requires the least comment; for it is so patent that it has become a mere byword throughout the land. Personal property nowhere bears its just proportion of the burdens; and it is precisely in those localities where its extent and importance are the greatest that its assessment is the least. The taxation of personal property is in inverse ratio to its quantity; the more it increases, the less it pays. The reason is plain. So far as it is intangible, personal property escapes the scrutiny of the most vigilant assessor; so far as it is tangible, it is purposely exempted in its chief form, as stock in trade, in our commercial centres. In the mad race for wealth it is considered dangerous for the local assessors in large cities to list the merchant's capital, with the possible result of driving it away to localities more favored by their financial officers. It is scarcely necessary to give figures to substantiate these statements; but a few facts, taken from the official documents, national, state and municipal, may be of interest.

The tenth census of the United States asserts that from 1860 to 1880 the assessed valuation of real estate increased from 6,973 millions of dollars to 13,036 millions, while that of personal property decreased from 5,111 to 3,866 millions. In 1890 the assessed valuation of real estate had grown to 18,956, while that of personal property was 6,516 millions,—less than the figures of thirty years before. In California personal property was assessed in 1872 at 220 millions of dollars, in 1880 at 174 millions, and in 1887 at 164 millions,—a net decrease in fifteen years of 56 millions. Real estate increased during the same period from 417 to 791 millions. Personal property paid 17.31 per cent, real estate 82.69 per cent of the taxes. By 1893, although the assessed value of real estate was 1000 millions, that of personalty was only 173 millions. In Illinois in 1882 personal property paid 22.01 per cent of the taxes, in 1894 only 17.26 per cent. In Cook County (including Chicago), personal property paid only 14 per cent;

in Kankakee County, only 11 per cent. In Iowa, while the real estate valuation in 1893 increased over that of the preceding year by 32 million dollars, the assessed valuation of personal property actually decreased. In New York the figures are as follows:

	Real Estate.	Personal Property.
1843	$ 476,999,000	$118,602,000
1859	1,097,564,000	307,349,000
1871	1,599,930,000	452,607,000
1878	2,373,418,000	364,960,000
1888	3,122,588,000	346,611,000
1893	3,626,645,000	411,413,000

The proportion paid by personal property has decreased steadily almost every year, until according to the last figures it pays but 9.99 per cent of the state taxation, as against 90.01 per cent falling on real estate. In twenty-five years the valuation of real estate has increased $2,000,000,000; that of personalty has diminished about $40,000,000. In the District of Columbia the valuation was in 1878: realty 83 millions, personalty 17 millions; in 1894 realty had increased to 160 millions, personalty had decreased to 11 millions. In New Jersey, in 1887, in one township the real estate was assessed at $272,232, the personal property at $591; in another the figures were $2,274,900 and $47,150 respectively. In New York the personalty was returned in one town at $5000, in the adjoining but no more prosperous town at $700,000. Perhaps the most remarkable figures are found in the large cities. In Cincinnati the valuation in 1866 was: realty, $66,454,602; personalty, $67,218,101. In 1892 the realty had increased to $144,208,810; the personalty had decreased to $44,735,670. In Monroe county, New York, in which the city of Rochester is situated, the realty was assessed in 1892 at $132,202,478; the personalty at $8,408,803. Finally, in the city of Brooklyn in 1893 real estate was assessed at $486,497,186, while personalty was valued at $19,123,170. Personal property, in other words, paid a little more than *three per cent* of the whole tax on

property. In 1895 the proportion fell still lower, — to *one and twenty-three hundredths per cent.*

These striking figures become ridiculous when it is remembered that in our modern civilization the value of personal property far exceeds that of real estate, as understood by the taxing power. It is true that the legal distinction between real and personal property fluctuates in the various commonwealths; but in the eyes of the assessors real estate generally includes only land and the fixtures thereto, all the other forms of wealth being regarded as personal property. In California, indeed, the constitution of 1879 provides that mortgages of real estate shall be regarded and taxed as realty. This is true also in Massachusetts. But even if mortgages were counted as real estate, and even if (as is nowhere done) other certificates of ownership in realty were also counted as real estate, it would still remain true that personal property constitutes the greater part of the national wealth. For personal property does not denote merely movable objects. It includes money, public obligations and the vast mass of intangible property represented by securities of corporations, of which only a small portion are certificates of ownership in realty. Above all, personal property includes the entire and ever-increasing annual products of agriculture and industry — the gigantic mass of modern wealth devoted mainly to consumption, but existing as the stock in trade of individuals. Even in our western commonwealths, where the communities are still mainly agricultural, it is an acknowledged fact that the personalty exceeds the realty. The auditor of Washington tells us that, if a true valuation could be reached, it is "clear and incontestable that the wealth of the territory in personal property, for the purposes of taxation, would largely predominate over that of real estate."[1] And if this is true of the far West, how much greater must be the relative proportion of personalty in the busy marts

[1] *Report of the Territorial Auditor to the Legislative Assembly*, 1887, p. 94. *Cf. Biennial Report of the Auditor of Iowa*, 1881, p. 8, and that of the *Comptroller of Idaho*, 1887–88, p. 74, to the same effect.

of the East.[1] Yet the more differentiated the industry and the more predominant the personalty, the less does the latter contribute to the public charges; until in the foremost state of the Union realty pays more than nine-tenths and personalty less than one-tenth; while in its second largest city realty pays ninety-nine hundredths and personalty only one hundredth of the tax.

The taxation of personal property, therefore, is in inverse ratio to its quantity. The more it increases, the less it pays. The general property tax thus sins against the principle of universality of taxation even more than against the principle of uniformity. In the middle ages whole classes were exempt by express provision of the law; in our time and country whole classes are exempt by the inevitable working of the law. It is the law which is equally at fault in both cases.

3. *Incentive to dishonesty.* One of the worst features of the general property tax is that any attempt to enforce the taxation of personalty by more rigid methods results in evasion and deception. The property tax necessarily leads to dishonesty, and this for two reasons. In the first place, under our system, whole classes of personalty are exempt from state taxation. The most familiar examples are imported merchandise in the original package; United States bonds, notes, checks and certificates; property *in transitu;* goods produced in another state sent on commission; deposits in savings banks, *etc.* The temptation for the taxpayer to convert his property temporarily into these classes is generally irresistible. Not only does the law hold out to individuals inducements to practise fraud, but it sustains them in its commission.[2] Secondly, wherever any pretence is made

[1] *Cf. New York State Assessors' Report*, 1880, and *Comptroller's Report*, 1889, p. 33: "I am sure that the actual value of the personal property legally liable to taxation exceeds that of the real estate."

[2] In People *ex rel.* Ryan, 88 N. Y. 142, the Court of Appeals held that the assessors were bound by a transaction which the court itself declared to be "a device to escape taxation." In 1892, however, a law was passed in New York requiring applicants for reduction of assessment to make oath that they had not incurred debts for the purpose of avoiding taxation.

of enforcing the tax on personalty, and especially where the taxpayers are required to fill out under oath detailed blanks covering every item of their property, the inducements to perjury are increased so greatly as to make its practice universal. The honest taxpayer would willingly bear his fair share of the burden; but even he cannot concede his obligation to pay other men's taxes. The only result of more rigid execution of the law is a more systematic and widespread system of deception. Official documents tell us that "instead of being a tax upon personal property, it has in effect become a tax upon ignorance and honesty. That is to say, its imposition is restricted to those who are not informed of the means of evasion, or, knowing the means, are restricted by a nice sense of honor from resorting to them."[1] The tax commission of New Hampshire declares that "the mere failure to enforce the tax is of no importance, in itself considered, in comparison with the mischief wrought in the corrupting and demoralizing influences of such legislation."[2] The Illinois commission asserts that the system is "debauching to the conscience and subversive of the public morals — a school for perjury, promoted by law."[3] The Connecticut commission maintains that the resulting "demoralization of the public conscience is an evil of the greatest magnitude."[4] A late New York report states that "it puts a premium on perjury and a penalty on integrity."[5] The Ohio commission tells us that "it results in debauching the moral sense and is a school of perjury, imposing unjust burdens on the man who is scrupulously honest."[6] The recent Cleveland commission says that "the existing system is productive of the gravest injustice; under its

[1] *Report of the Commissioners of Taxes and Assessments in the City of New York*, 1872, p. 9.

[2] *Report to the Legislature by Hon. George Y. Sawyer*, 1876, p. 16.

[3] *Report of the Revenue Commission*, 1886, p. 8.

[4] *Report of the Special Commission on Taxation*, 1887, p. 27. *Cf.* the *New Jersey Tax Commission Report*, 1880, p. 11.

[5] *Report of Counsel to revise the Tax Laws of New York*, 1893, p. 12.

[6] *Report of the Tax Commission of Ohio*, 1893, p. 22.

sanction, grievous wrongs are inflicted upon those least able to bear them; these laws are made the cover and excuse for the grossest oppression and injustice; above all and beyond all, they produce in the community a widespread demoralization; they induce perjury; they invite concealment. The present system is a school of evasion and dishonesty. The attempt to enforce these laws is utterly idle."[1] The West Virginia commission tells us that "the payment of the tax on personalty is almost as voluntary and is considered pretty much in the same light as donations to the neighborhood church or Sunday-school."[2] And almost every annual report of the state comptrollers and assessors complains bitterly that the assessment of personalty is nothing but an incentive to perjury.[3]

4. *Regressivity.* Taxes are progressive when their increase is more than proportional to the increase of the property or income taxed, *i.e.* when the rate itself increases with the increase of the property. Taxes are regressive when the rate increases as the property or income decreases. The general property tax in its practical effects is often regressive, since the tax on personalty is levied virtually only on those who already stand on the assessor's book as liable to the tax on realty. Those who own no real estate are in most cases not taxed at all; those who possess realty bear the taxes for both. The weight of taxation really rests on the farmer, because in the rural districts the assessors add the personalty, which is generally visible and tangible, to the realty, and impose the tax on both. We hear a great deal about the decline of farming land. But one of its chief causes has been singularly overlooked. It is the overburdening of the agriculturist by the general property tax. What is practically a real property tax in the remainder of the state becomes a general property tax in the rural regions. The farmer bears not only his share,

[1] *Report of the Special Committee on Taxation of the Cleveland Chamber of Commerce*, 1895, p. 10.

[2] *Preliminary Report of the Tax Commission*, 1884, p. 10.

[3] *Cf. Report of California Board of Equalization*, 1885–86, p. 6.

but also that of the other classes of society. Thus official documents tell us that "the class of property that escapes taxation most is the class of property that pays the largest dividends."[1] And in general it may be said, with our state auditors, that "the property of the small owner, as a rule, is valued by a far higher standard than that of his wealthy neighbor."[2] Or, as it is put by others: "In every portion of the state we find the most unproductive property, and that of the lowest real value, assessed at the highest ratio. The rule holds good that those who have to battle hardest with life for subsistence, are compelled to pay the most onerous taxes on the real value of their property."[3]

It is no wonder that in their desperation the small farmers should cry out for the equal enforcement of the laws taxing personalty; it is no wonder that they should attempt to stem the current in ignorance of the impossibility of the task. They have forgotten Walpole's saying, that it is safer to tax real than personal estate, because "landed gentlemen are like the flocks upon their plains, who suffer themselves to be shorn without resistance; whereas the trading part of the nation resemble the boar, who will not suffer a bristle to be pluckt from his back without making the whole parish to echo with his complaints."[4]

5. *Double Taxation.* Double taxation, as we shall see later on, is of various kinds. But there is one form which is particularly applicable to the property tax, namely that of debt exemption. This is perhaps the greatest weakness of the general property tax, and the one which has given rise to the most interminable discussion.

On the one hand it is maintained that an offset should be made for all indebtedness, whether mortgage debts on real property or general liabilities on personalty. Individuals

[1] *Biennial Report of the Auditor of Iowa*, 1880–81, p. 6.

[2] *Biennial Report of the Auditor of Kentucky*, 1887, p. iv.

[3] *Report of the State Assessors of New York*, 1873, p. 9. *Cf. West Virginia Tax Commission, Preliminary Report*, 1884, p. 8; *Report of the Comptroller of Tennessee*, 1888, p. 16.

[4] *Cf.* Sinclair, *History of the Public Revenue*, vol. iii., appendix, p. 79.

should be taxed on what they own, not on what they owe. To tax both borrower and lender is double taxation. This is the view of the Connecticut commission,[1] and the practice of most of the states accords with it. On the other hand, the majority of American investigators assert that deduction for indebtedness results practically in such injustice and deception as to be utterly unendurable. They therefore demand that there shall be no offset of debts against property. This is the view of the Massachusetts and New Jersey commissions,[2] and the practice in some states like Pennsylvania, Georgia, Kentucky, Louisiana, Maryland and Missouri.

Both these views are correct. To tax both lender and borrower for the same property is plainly double taxation, and therefore unjust. The fallacy of the contrary opinion consists in looking at the property rather than at the owner. What the state desires to reach is primarily the individual. It taxes his property simply because it considers this a test of his ability to pay. But his ability is manifestly reduced *pro tanto* by his debts. His true taxable property therefore consists in his surplus above indebtedness. Otherwise one would be taxed for what he has, and another for what he has not. As it has been well put, what we want to tax is ability, not liability. This is the view accepted by all European authorities.[3] The only American scientist who holds to the contrary opinion, Amasa Walker, does so in a half-hearted way; for he bases his view on utterly arbitrary data, confesses that much hardship will ensue, and finally concludes that the income-tax principle is the only just one.[4] To tax both property and credits, both lender and borrower, is plainly incorrect in principle and inequitable in practice.

On the other hand it is equally true that deduction for debts is thoroughly pernicious in its operation. It is the

[1] *Report of the Commission of* 1887, p. 26.

[2] *Massachusetts Commission,* 1875, pp. 95–98; *New Jersey Commission,* 1880, p. 20; *Commission of* 1891, *Preliminary Report*, p. 10.

[3] Roscher, *Finanzwissenschaft*, p. 336; Wagner, *Finanzwissenschaft*, ii., p. 432.

[4] A. Walker, *Science of Wealth* (7th edition), p. 339.

universal testimony that no portion of the tax laws offers more temptations to fraud and perjury than this system of offsets. The creation of fictitious debts is a paying investment. In the states where such deductions are permitted, attempts to obtain immunity from taxation in this way are widespread and generally successful. And they are most successful in the case of property which already bears less than its share of the burdens. The great majority of officials cry out against debt-exemption as an utter abomination.[1]

Both methods are thus unendurable. Debt-exemption and no debt-exemption are equally bad. The states shift from one policy to the other in equal despair. We are therefore forced to the conclusion that the whole system is unsound. The fault lies not in the exemption, but in the taxation, of property. The general property tax under either of these two methods produces crying injustice. As there is no third method possible, the inference is that the injustice is of the essence of the general property tax. The New York commission, indeed, came to the conclusion that mortgage debts should be deducted from realty, but that there should be no offset for debt in the assessment of personalty.[2] This would be a legal discrimination wholly subversive of the first principles of justice. As a matter of fact, just the contrary principle prevails at present in New York and Connecticut; debts are there deductible only from personalty. There is no logical escape from one of the two methods, debt-taxation or debt-exemption; and under either plan the general property tax stands convicted by the test of experience.

Under a system, indeed, where there is no general property tax, but simply a tax on real estate, the question of taxing mortgages assumes a different aspect and must be decided independently. As that problem is discussed else-

[1] *Report of the Commissioners of Assessment and Taxation in Oregon*, 1886, p. 9.

[2] *First Report*, 1871, pp. 60–69, 71–79. *Cf.* the sharp criticism in the *Massachusetts Tax Commissioners' Report*, 1875, p. 96.

where in this volume,[1] it may be omitted here. But as soon as we have the general property tax and exempt mortgage debts on real estate, the exemption must consistently be accorded to all debts. And we are then immediately confronted by the dilemma just discussed.

If we sum up all these inherent defects, it will be no exaggeration to say that the general property tax in the United States is a dismal failure. No language can be stronger than that found in the reports of the officials charged with the duty of assessing and collecting the tax. Whole pages might be filled with such testimony from the various states. Only the following extracts from the New York reports are given, as samples :

A more unequal, unjust and partial system for taxation could not well be devised.[2]

The defects of our system are too glaring and operate too oppressively to be longer tolerated.[3]

The burdens are so heavy and the inequalities so gross, as almost to paralyze and dishearten the people.[4]

The absolute inefficiency of the old and rickety statutes passed in a bygone generation [is patent to all].[5]

The hope of obtaining satisfactory results from the present broken, shattered, leaky laws is vain.[6]

The system is a farce, sham, humbug.[7]

The present result is a travesty upon our taxing system, which aims to be equal and just.[8]

[The general property tax is] a reproach to the state, an outrage upon the people, a disgrace to the civilization of the nineteenth century, and worthy only of an age of mental and moral darkness and degradation, when the "only equal rights were those of the equal robber."[9]

[1] *Infra*, chap. iv., sec. i.

[2] *First Annual Report of the State Assessors*, 1860, p. 12.

[3] *Comptroller's Report*, 1859.

[4] *Assessors' Report*, 1873, p. 3.

[5] *Assessors' Report*, 1877, p. 5.

[6] *Report of Commissioners of Taxes and Assessments*, 1876, p. 52.

[7] *Assessors' Report*, 1879, p. 23.

[8] *Comptroller's Report*, 1889, p. 34.

[9] *Assessors' Report*, 1879, p. 7.

After such self-criticism nothing more need be said. In comparison with this, the view of the European scientists is moderate, that "a cruder instrumentality of taxation has rarely been devised." [1] And yet, notwithstanding all this criticism, our methods limp along almost unchanged.

II. *History of the Property Tax.*

In the previous chapter we have learned how direct taxation begins, and have seen that the primitive form is the land tax or tax on real estate. We also noticed the process by which the original mass of property is gradually broken up, and personal property slowly assumes a greater importance in the wealth of the community. Let us study a little more in detail the subsequent history.

The monarch, or public opinion as reflected in the government, seeks to conform the practice of taxation to this change in economic facts. The property tax continues, but the assessor tries to make the tax equable by including not only the realty, but also all these new forms of personalty, whether corporeal or incorporeal. The original land tax is supplemented by other taxes, or expanded into a general property tax. The attempt is intelligible and even laudable; for it is simply the manifestation of the ideas of equality and universality of taxation. Personal property must not escape; *ergo*, it must be included in the designation of general property and taxed equally with the real property.

The attempt is laudable, but it is futile. Personalty will evade the most inquisitorial assessor. Wherever tried, the general property tax again resolves itself into the real property tax. History shows us that this has always been the case. The more complex the industrial development, the more inevitably does this process take place and the more surely does the general property tax virtually revert to its primitive form of real property tax. Not alone history, but theory,

[1] Leroy-Beaulieu, *Science des Finances* (5me éd.), iii., p. 498: "Rarement, dans la fiscalité moderne, on a inventé d'instrument plus grossier."

shows us that this must be so. For the general property tax, as we have seen, originated with and is calculated for an economic system where the only property is the collective, indivisible property, where the landowner and capitalist are one. There is one kind of property, and therefore one kind of property tax. But as soon as property is split up into different parts, as soon as there are various kinds of property, just so soon does the single property tax become antiquated and useless. It is not only useless, but it is now absolutely iniquitous. For the attempt to include under one head the gains flowing from widely different pursuits — pursuits whose number and divergence are limited only by the well-nigh boundless variety of individual capacity —, this attempt to reduce the multiform to the uniform can end only in the virtual exemption of the new forms and a consequent over-burdening of the old. What has been conceived in the spirit of justice develops into an embodiment of injustice. What has been in its origin an attempt to attain equality results in gross inequality.

Because of the evident impracticability of the general property tax, governments now begin to fit their theories of taxation to the economic facts. They abandon the attempt to make the new facts conform to the old theories. As various forms of personalty gradually set themselves free from taxation, the state reasserts the principle of equality. But it now recognizes the existing facts and abandons the fiction of the general collective property. As property splits up into its various elements, new taxes are laid, one by one, not on the property but on the separate sources of this new wealth. The old land tax may be retained, but other taxes are imposed in various forms. Taxes on vocations, on professions, on trade, on commerce, on profits, on interest, on wages and salaries, follow in quick succession, until finally the theories and practice of taxation are in harmony with actual conditions. One by one these various sources of wealth drop off from the antiquated general property tax only to receive a new life in these fresh forms. The feeling of equity in

the public consciousness cannot be put down. What escapes under one form it attempts to reach under another. Fiscal theory cannot long lag behind the facts of industrial life.

Let us test the truth of these statements by an appeal to history. Let us trace, in other words, the actual development of the general property tax.[1]

In antiquity direct taxation was treated as an extraordinary source of revenue. The Athenian direct tax (*εἰσφορά*), as levied in the time of Solon (B.C. 596), was nominally a classified property tax, but in reality a land tax.[2] With the increase of wealth an attempt was soon made to reach personalty; but its success is entirely conjectural. We simply know that under Nausinicus (B.C. 380) the bases of taxation were not only land and houses, but also slaves, cattle, furniture and money. It has been claimed, however, that the tax had by that time become a progressive income tax.[3] At all events there is no proof that the tax on intangible personal property as such was at all successful.

In Rome the direct tax (*tributum civium*), which was sometimes even treated as a forced loan to be repaid out of the proceeds of conquest, was levied only to meet extraordinary expenses for which the proceeds of domains (the *vectigalia*) did not suffice. As Rome was at first an agricultural community, the real "quiritarian" property alone recognized by law consisted solely of land and the capital affixed to land, like houses, slaves and cattle. These were the *res mancipi*.[4] But the property tax was assessed only on the land, on the

[1] The only attempt thus far made to discuss this subject is that of Parieu, *Histoire des Impôts Généraux sur la Propriété et le Revenu* (1856). But this is inexact, inadequate, unclear and antiquated.

[2] Boeckh, *Public Economy of the Athenians*, book iv., chap. 5.

[3] This is claimed by Rodbertus, in Hildebrand's *Jahrbücher*, viii., pp. 453 *et seq.* For the other view see the complicated interpretation of Boeckh (p. 669 of the American edition).

[4] "Mancipi res sunt praedia in Italico solo, tam rustica, qualis est fundus, quam urbana, qualis domus; item jura praediorum rusticorum, velut via, iter, actus, aquaeductus; item servi et quadrupedes, quae dorso collove domantur, velut boves, muli, equi, asini. Ceterae res nec mancipi sunt." Ulpian, 19, 1. *Cf.* Gaius, i., p. 120; ii., pp. 15–17.

assumption that every acre of land would require a definite quantity of this productive capital.[1] The early Roman property tax was therefore in effect a tax on realty, analogous to the early *εἰσφορά*.[2] With the development of trade and industry in the later days of the republic, the character of property underwent a change. The amount of personalty increased. If the *tributum* was to remain a general property tax, it would be necessary to assess also these new forms of property. And, in truth, the attempt was made. Not only farming implements, but ships, carriages, money, garments, ornaments, *etc.*, were listed.[3] But it must be remembered that the only personalty assessed still consisted of visible, tangible objects, although the censors had practically unlimited power to take up any property into the tax-list (*census*). There is no evidence to prove that trading capital proper was at all taxed.[4] And it is useless to speculate what might have been the result during the last period of the republic; for further progress in this direction was checked by the fact that, with one isolated exception, the republic levied no direct property tax at all on the Roman citizens after 167 B.C. Whether the *tributum civium* was again employed during the empire is a moot question. The weightier arguments seem to be on the side of those who maintain that it was never again made use of in its old form.[5]

In the provinces the property tax was nothing but a land

[1] Marquardt, *Römische Staatsverwaltung* (2d edition), ii., p. 166.

[2] Except that it was not a graduated tax, and was levied on the market value, not the produce.

[3] Matthias, *Römische Grundsteuer und Vectigalrecht*, 1882, p. 6. The leading ideas of Matthias are translated in Humbert, *Essai sur les Finances chez les Romains*, ii., pp. 328 *et seq.*

[4] The only one who maintains the contrary is Walter, *Geschichte des römischen Rechts* (3d edition) i., p. 271. But the passage of Livy to which he refers (vi., 27) does not bear out his assertion. Walter stands quite alone.

[5] Rodbertus, Hildebrand's *Jahrbücher*, iv., pp. 408–427, and Hegewisch, *Römische Finanzen*, p. 1340, maintain its existence. But Savigny, *Vermischte Schriften*, ii., pp. 151, 185; Huschke, *Ueber den Census zur Zeit Christi*, pp. 70, 190; Mommsen, *Römische Geschichte*, ii., p. 387; and Mar-

tax — either a tax on the value (*tributum soli*), or a tithe (*decuma*), or a ground rent (*vectigal certum* or *stipendium*). In addition to the land tax proper we find the poll tax (*tributum capitis*) which, in some of the older provinces where the remains of an enterprising commercial life still existed, probably included a tax on classes or professions or a nominal general property tax.[1]

The Roman property tax was therefore virtually a tax on land and the little productive capital affixed to land. Personalty, so far as it was assessed at all, consisted of the meagre tangible objects owned by an agricultural people. The Romans had a general property tax because, as in Greece, there was only one kind of property — the collective property owned by slave-holding landed proprietors.

Under the empire industrial society began to differentiate. Caligula (A.D. 37–41) took advantage of this to levy taxes on special classes, above all on carriers, prostitutes and pimps.[2] Trading capital, everywhere the first element to separate itself from the collective mass of property, was reached for the first time by Vespasian (69–79) in the curious tax on the private owners of city urinals and closets.[3] Finally, shortly before Caracalla (211–217) we find a general tax on commercial capital, known henceforth as *aurum negotiatorium*. But what a singular commentary it is on the progress of civilization that the first tax on circulating

quardt, *Römische Staatsverwaltung*, ii., p. 171, take the opposite view. Dureau de la Malle, in his *Économie Politique des Romains*, does not touch this point. The decisive quotation is that from Tacitus, *Annales*, 13, 51, of which Rodbertus' interpretation is strained. The best argument — which has not hitherto been advanced — seems to be this: that if the *tributum civile* had continued, it would not have been necessary for Diocletian to introduce into Italy the *tributum provinciale*.

[1] Rodbertus, iv., p. 364, puts it too strongly when he says that it was only a poll tax. See Marquardt, *op. cit.*, ii., p. 195.

[2] Suetonius, *Caligula*, 40: "Ex gerulorum diurnis quaestibus pars octava, ex capturis prostitutarum quantum quaeque uno concubitu mereret." *Cf.* Dio Cassius, lix., 28.

[3] Known as *foricarii*. Suetonius, *Vespasian*, 16, 23. *Cf.* for other authorities Walter, *Rechtsgeschichte*, i., p. 498.

capital should be on a rather degrading occupation, and the first tax on industry one on prostitutes.[1] Caracalla, we are told, conferred the privilege of Roman citizenship upon all the inhabitants of the empire in order to extend to them the now numerous direct taxes, especially the succession and manumission taxes.[2] The provincial land tax continued; but it went through the same evolution as the civic direct tax and became a general property tax.

The industrial development, however, had outrun fiscal theory. It became more and more difficult to reach personalty. More and more barbarous methods were introduced;[3] until, as Lactantius tells us in stirring language, torture was applied to the recalcitrant owner.[4] Under Diocletian the provincial land tax (known henceforth as *jugatio* or *capitatio terrena*) was introduced into Italy. But at the time of the Theodosian code and the completion of the late fiscal system, we find, not the general property tax,[5] but a vast variety of taxes, indirect and direct. Chief among the latter were those on the profits of trades, professions and artisans,[6] now consolidated into corporations through the petrifaction of industrial relations.[7] But the attempt to tax personal property by means of a general

[1] Hildebrand's *Jahrbücher*, v., p. 315.

[2] At least this is the uncharitable construction of the act by Dio Cassius.

[3] The municipal decurions, for example, were made personally liable for the taxes levied on their municipalities. Service as decurion became compulsory and hereditary. Fugitive decurions were brought back, like fugitive serfs or military deserters.

[4] *De morte pers.* 23: Fora omnia gregibus familiarium referta; unusquisque cum liberis, cum servis aderat; tormenta ac verbera personabant; filii adversus parentes suspendebantur; fidelissimi quique servi contra dominos vexabantur, uxores adversus maritos. Si omnia defecerunt, ipse contra se torquebantur, et quum dolor vicerat, adscribebantur quae non habebantur.

[5] The poll tax (*capitatio plebeia* or *humana*) levied on the serfs (*coloni*) was practically a property tax because it was paid by the landowner.

[6] Known as *chrysargyrum*, *vectigal artium*, *pensio auraria*, and *aurum lustrale*. *Cf.* Levasseur, *Histoire des Classes Ouvrières en France*, i., pp. 72–78.

[7] *Cf.* Wm. Adams Brown, "State Control of Industry in the Fourth Century," *Political Science Quarterly*, ii., 1887, pp. 494–513.

property tax was abandoned because the original mass of property had disintegrated. The primitive system was abolished, and was replaced by methods more or less analogous to those employed in modern Europe.

During the middle ages the same development can be noticed. In the early period, after the disruption of the Roman empire, there were no taxes at all. The primitive Teutonic idea forced its way into the feudal system, and the contributions originally devoted to public purposes became the private possessions of feudal nobles and over-lords. The public tax became private property.[1]

In the early feudal system land was practically the only form of wealth, just as it was the basis of the political fabric. In England the feudal payments (*scutages*, *carucages* and *tallages*) were assessed on the land, just as the Saxon *shipgeld* and *danegeld* were land taxes. These were at first levied on the gross produce of the land, either actual or as computed by the mere quantity of the land. With the progress of cultivation net produce rather than gross produce was made the test. Rents became the only practicable test of the value of land. But from the twelfth century onward, the growth of industry and commerce in the towns led to such an increase of personalty or movables that it became necessary to devise some new method of reaching the ability of the citizens. The only way out of the difficulty in England, as on the whole continent, was a combination of the taxes on lands and on movables through the general property tax.

The mediæval town was the birthplace of modern taxation. Every inhabitant was compelled to bear his share of the local burdens, his proportion of the scot and the lot. The scot, or tax, was almost from the very outset the general property tax combined with the subordinate poll tax, exactly

[1] *Cf.* for details Clamageran, *Histoire de l'Impôt en France*, i., p. 115; and Vuitry, *Études sur le Régime Financier de la France avant la Révolution*, i., p. 420.

as in the earliest days of the New England colonies. The town, as such, generally paid its share of the national burdens in a lump sum, the *firma burgi*. But this lump sum was always distributed among the townsmen in proportion to the property of each.[1] On the continent it was the same. In the German towns the taxes were at first levied only on land. But at the close of the twelfth century, the land tax had already been merged into the general property tax — or, as it was called, the tax on property *in possessionibus, agris, domibus, censibus et rebus quibuscunque*.[2] In some towns it was called simply a tax of so much *per posse* or *pro bonorum facultate*.[3] Most of the German towns by this time combined the general property tax with the poll tax,[4] and in the Swiss cantons the tax was even called the *Hab-, Gut-, und Kopfsteuer*.[5] The only distinction between England and the continent was that in England the property tax remained for centuries the sole local tax, while in France and Germany local excises or *octrois* were soon added. But for some time at least the general property tax was the measure of the individual's capacity.

The general state taxes followed in the wake of the municipal taxes. Already in 1166 a tax on movables was levied throughout almost all Europe in order to aid the crusaders.[6]

[1] Numerous examples may be found in Madox, *Firma Burgi*, pp. 281 *et seq.* In one town, under Edward III., each man is "taxandus et assidendus juxta quantitatem bonorum et catallorum suorum ibidem." In another town the tax "debet assideri proportionaliter juxta quantitatem bonorum suorum." For London, where each freeman paid the general property tax as *partem de bonis suis* or *partem catallorum*, see the examples in *Munimenta Gildhallae Londoniensis, Liber Albus*, i., p. 592 *et seq.* For full details as to the method of assessment *tempore* Edward II., see *Liber Custumarum*, pp. 193 *et seq.*, 568 *et seq.*

[2] Zeumer, *Die deutschen Städtesteuern . . . im xii. und xiii. Jahrhundert*, pp. 86–89.

[3] Christian Meyer, *Augsburger Stadtbuch*, pp. 75, 313.

[4] Schönberg, *Finanzverhältnisse der Stadt Basel im xiv. und xv. Jahrhundert*, p. 134.

[5] Blumer, *Staats- und Rechtsgeschichte der schweizerischen Democratien*, ii., pp. 295 *et seq.*

[6] Sinclair, *History of the Public Revenue*, i., p. 88.

But the first general property tax, into which all the older contributions from the land soon merged, was the Saladin tithe of 1188 on the occasion of the third crusade. In England from this time on, the grants of rents and movables (*de redditibus et mobilibus*, or, as they were sometimes called, *de redditibus et catallis*) became more and more common until they finally superseded the older methods of securing revenue. The fractional parts of the property granted varied from a fortieth to a fourth, but from 1290 it became customary to tax the nobility and the clergy only two-thirds as much as the commons. In 1334 the proportion was fixed as the fifteenth and the tenth. Since the land was owned chiefly by the nobles, this meant a higher nominal rate for movables. But in reality there was a substantial equality because the assessment of chattels was not strictly enforced. This is apparent from the dissatisfaction shown with the tax of 1275, when the people were assessed *ad unguem*, *i.e.* up to the full value of their movables.[1] In the succeeding grants the old easy practice was resumed. As the tax on lands, however, could be levied on actual rents, it was not apt to be so leniently assessed. Thus a substantial equality was probably reached.

Just as in England the tallages merged into the fifteenths and tenths, so in France the feudal charges on the land developed into the general property tax, which however still retained the old name *taille*. The ordinances of 1254–56 attempted to regulate the assessment, and provided that movables should be charged only half as much as immovables.[2] France thus endeavored to attain by law what England effected by custom. During the fourteenth century the *taille* came to be the chief direct tax, and in 1439 it was made a permanent annual tax. In Germany, also, the imperial and state direct taxes, in so far as there were any, took the form of general property taxes. The *Bede*,[3] the *gemeiner*

[1] Dowell, *History of Taxation and Taxes in England* (2d edition), i., p. 68.

[2] Clamageran, *Histoire de l'Impôt en France*, i., p. 264.

[3] At first a feudal land payment; *cf.* Hüllmann, *Deutsche Finanzgeschichte des Mittelalters*, p. 133.

Pfennig,[1] the *Landschoss*,[2] the *Landsteuer*,[3] *etc.*, all followed the example of the local property tax.

In the Italian republics the commonwealth was at first supported by the general property tax. In Milan, under the name *stima e catastro de beni*, it is found as early as 1208, and afterwards was levied with such severity that the assessment book was known as the *libro del dolore*.[4] In Genoa it was called *colletta*.[5] In Florence it was known as *estimo* and played an important rôle in politics.[6] And finally we find in the Netherlands from the earliest times the general property tax known as the *schot* or the tenth, *etc.*, on *bezittungen* (possessions).[7]

The general property tax thus existed throughout all Europe. It was moderately successful because well suited to the period. Although involving an inquisitorial search into every article of the scanty mediæval stock, as can readily be seen from the detailed schedules of assessments still in existence, the tax was levied chiefly on tangible, physical objects not capable of easy concealment. With the exception of countries like France, where the tax was emasculated by the system of exemptions, it resulted on the whole, during this early period of society, in a tax fairly proportional to the individual faculty. There was a general property tax because there was a very slight differentiation of property.

Before long a change set in. In England the fifteenths

[1] Lang, *Historische Entwickelung der teutschen Steuerverfassungen seit der Karolinger*, p. 182.

[2] Schmoller, "Die Epochen der preussischen Finanzpolitik," in *Jahrbuch für Gesetzgebung, Verwaltung und Volkswirtschaft*, i., pp. 35, 42.

[3] Hoffmann, *Geschichte der direkten Steuern in Baiern vom Ende des xiii. Jahrhunderts*, pp. 11, 17, 39.

[4] Carli, *Relazione del Censimento dello Stato di Milano*, in Custodi's *Scrit tori Classici Italiani, parte moderna*, xiv., pp. 184, 185.

[5] "Le imposte straordinarie si possono di questa epoca [1252] comprendere in una sola, la colletta." Canale, *Storia dei Genovesi*, i., p. 318 (edition of 1844).

[6] Villani tells us that it was levied on "cio che chiascuno havea di stabile e di mobile e di guadagno." *Istorie Fiorentine fino al anno* 1348, book x., chap. 17 (vol. vi., p. 26, of Milan edition of 1803).

[7] Engels, *De Geschiedenis der Belastingen in Nederland*, pp. 60–65.

and tenths were changed from percentage to apportioned taxes, and every locality had to raise a definite lump sum. But the old methods of assessment fell into disuse. Each town and county made its own arrangements and treated personal property with such leniency that the total product of the tenth and the fifteenth continually decreased. This resulted in attempts on the part of the crown to supplement the old tax by a new general property tax, called the subsidy. The early efforts met with failure, but finally, in 1514, the first general subsidy was granted, as a tax of sixpence in every pound of property. The pound rate was afterwards fixed at four shillings on lands, and two shillings eight pence on goods. But the subsidy went through precisely the same development as the fifteenth and the tenth. At first really a percentage tax, it was soon practically converted into an apportioned tax of a stated lump sum. No re-assessment of the districts took place; each locality was supposed to pay the same sum year after year. All increase in wealth was thus entirely omitted from the lists. Exemption after exemption was made, and personal property was so loosely assessed that the total yield continually declined. The most arbitrary methods were employed. Only the old "subsidy-men" were taxed; allowances were made in a multitude of cases; and the assessments of personalty were so low and partial that the subsidy became a perfect farce. As Bacon said, "the Englishman is master of his own valuation."[1] Sir Robert Cecil stated in 1592 that there were not over five men in London assessed on their goods at £200; and Sir Walter Raleigh wrote in 1601 that "the poor man pays as much as the rich."[2] Although nominally a general property tax, the subsidy thus came to be levied chiefly on the land, and became an unequal land tax — so unequal that it finally disappeared in 1663.

Under the commonwealth an attempt was made to revive the general property tax, under the name of commonwealth

[1] And, he adds, "the least bitten in purse of any nation in Europe."

[2] *Report on Public Income and Expenditure*, 1869, ii., p. 415.

monthly assessments.[1] The improvement was so marked that the old subsidies were completely abandoned and replaced by the assessments. But the reform was short-lived and the assessments of personal property continually diminished. Sir William Petty, after complaining of this, nevertheless held, as do some of our rural legislators to-day, that "assessments upon personal estates, if given in as elsewhere upon oath, would bring that branch which of itself is most dark to a sufficient clearness."[2] After the Revolution the tax was levied as the so-called property tax. By its terms[3] it was assessed on the persons possessed of personal property, real estate, or public offices or positions of profit. And it was at first a percentage tax. But the yield decreased so enormously that Parliament in 1697 fixed the sum a rate should produce, *i.e.* it became an apportioned tax of stated amount. Moreover, the difficulty of assessing personalty and the impossibility of reaching intangible property were now so apparent that the tax became almost exclusively a land tax, and was first so called in 1697. The "annual land tax" of England (which since 1798 has become simply a redeemable rent charge on land) was thus intended to be a general property tax and for a long time continued to be so legally.[4] The provision taxing personal property continued to exist on the statute book until 1833, and the clause taxing public offices and positions of profit was not finally repealed until 1867. The year before its repeal it had yielded the sum of £823![5] Such was the ludicrous result of the attempt to maintain mediaeval customs. The general property tax, which had started out as a land tax, reverted in name as well as in fact to its earliest form.

[1] Tayler, *The History of the Taxation of England*, p. 21.

[2] Petty, *Verbum Sapienti; or . . . the Method of raising Taxes in the most equal manner*, p. 17. (Appended to his *Political Anatomy of Ireland*, edition of 1691.)

[3] 4 William III., chap. 1.

[4] Adam Smith, *Wealth of Nations*, book v., chap. ii.: "By what is called the land tax, it was intended that stock should be taxed in the same proportion as land." (Thorold Rogers' edition, ii., p. 553.)

[5] *Report of the Commissioners of Inland Revenue*, 1867.

In other countries the history of the property tax is identical. In France the *taille* was of two kinds: the *taille réelle*, which was levied only on lands in the *pays d'État;* and the *taille personnelle*, nominally a general property tax levied in the *pays d'élection*, which constituted the greater portion of France. In reality the *taille personnelle* was assessed only on the families or households of the non-nobles (*roturiers*), and it became practically a land tax like the *taille réelle;* for the wealthy owners of personalty soon acquired the same privileges as the nobility. Vauban tells us that the *taille* as a tax on movables was assessed only on the poorest classes.[1] Sully, indeed, endeavoured in 1660 to restore the principles of the general property tax and to assess personalty as well as realty.[2] But he failed ignobly; for, at the close of the seventeenth century, the great work of Boisguillebert is full of bitter complaint and lamentation.[3] And when the attempt was made in the eighteenth century to supplement the *taille* by the *dixièmes* and *vingtièmes*, like the tenths or fifteenths of old in England, the new tax again soon became virtually a land tax.[4] The development was inevitable, and it resulted during the Revolution in the total abolition of the general property taxes.

In Germany, the mediæval assessment lists to be filled out by the taxpayer bear a striking resemblance to those

[1] "En résumé la taille était un impôt territorial qui n'atteignait que les propriétaires les plus pauvres du royaume, et une taxe mobilière qui portait exclusivement sur les classes les moins riches de la société." *Dîme Royale*, p. 32 of Daire's edition.

[2] Sully ordered the officials to assess contributors "à raison de leurs facultés, quelque part qu'elles soient, meubles ou immeubles, héritages nobles ou roturiers, trafic et industrie." *Cf.* Clamageran, *Histoire de l'Impôt*, ii., p. 359.

[3] "Il n'y a pas le tiers de la France qui y contribue, n'y ayant que les plus faibles, et les plus misérables; en sorte qu'elles les ruinent absolument." *Le Détail de la France*, chap. iii.

[4] "Dans la pratique, l'élément foncier prédominait presque exclusivement." Stourm, *Les Finances de l'ancien Régime et de la Révolution*, i., p. 240. See also Necker, *De l'Administration des Finances de la France*, i., p. 159. It must be noted, however, that these taxes were calculated on the basis of income, rather than of selling value.

still used in some of the American commonwealths.[1] But there, as here, it became continually more difficult to reach personal property. In Prussia (Brandenburg) this was true already at an early period.[2] In Bavaria as well as in Austria the nobility and the richer commercial class succeeded at the end of the sixteenth century in shoving the main burdens on the shoulders of the rural population.[3] And in the other German states the equal property tax remained so only in name.[4] In Switzerland, indeed, the property tax, like so many other mediæval customs, has been in part retained to this day. But its nature has been materially changed, in that it has become a progressive tax and that an attempt has been made to remedy its defects by joining to it an income tax. Even thus, much hardship and inequality ensue.[5]

In Italy the development of the property tax can be clearly studied in Florentine history. The *estimo*, at first assessed with comparative equality, soon became honeycombed with abuses. Personalty slipped out of the lists, the rich bankers entirely escaped, and the whole load of taxation fell with crushing force on the small owners, *populo minuto*. Hundreds were completely ruined and compelled to seek refuge in exile.[6] The discontent became so loud that after threats of revolution and disorder the *estimo* was finally supplanted in 1427 by the new tax, *catasto*, to be levied on the personalty of traders and

[1] For a typical list of 1531, see Bielfeld, *Geschichte des magdeburgischen Steuerwesens von der Reformationszeit*, pp. 19–23.

[2] Schmoller, "Die Epochen der preussischen Finanzpolitik," in his *Jahrbuch*, i., pp. 42, 49. *Cf.* his "Studien über die wirthschaftliche Politik Friedrichs des Grossen," in the *Jahrbuch*, viii., p. 38, for Brandenburg; viii., p. 1011, x., p. 330, and x., p. 350, for Magdeburg.

[3] Hoffmann, *Geschichte der directen Steuern in Baiern*, p. 70.

[4] Wagner, *Finanzwissenschaft*, iii. (1st edition), pp. 62, 77, 80.

[5] *Cf.* the article by Cohn in *Political Science Quarterly*, iv., p. 50.

[6] *Cf.* Léon Say, *Les Solutions Démocratiques de la Question des Impôts*, i., pp. 209 *et seq.*, especially pp. 222, 229. He gives no references. For a full history, see Baer, "*Il Catasto Fiorentino nel secolo* xv.", *Nuova Antologia*, vol. 17 (1871) and the book of Canestrini quoted in the next note but one.

bankers as well as on realty. Machiavelli gives us an interesting account of the opposition of the nobles, who were at the same time the great financiers.[1] But the new general property tax went the way of its predecessors. When we read of the subterfuges and evasions, of the strenuous efforts on the part of the state to compel the listing of personalty and of the dismal failure of the attempts, we seem to be reading the reports of American commonwealth assessors or comptrollers for 1895. Their experience was precisely the same as ours. In 1431 only fifty-two persons paid the tax on trade capital, although the amount of such capital must have been immense. And in 1495 the tax was made in name, what it had long been in fact,[2] — a tax on immovables only. Personalty, as such, was henceforth legally exempt. The general property tax had again become a land tax.

Throughout all Europe the local property tax has become a tax on real estate. In England the whole system of local taxation is based on the poor rate, according to the statute of 1601 which mentioned as liable to the tax not only occupiers of lands, houses, *etc.*, but every inhabitant, parson and vicar. The tax was a general property tax levied according to the ability of the individual, *ad statum et facultates*, as the courts put it. At first land was assessed, as everywhere else at the beginning, simply according to the number of acres; but by the time of William III., rental value was substituted for mere quantity as the test of ability. Since personal property also was taxable, this was, however, simply a general property tax. Yet from an early period the rule was adopted that all personal property liable must be local, visible and productive of a profit.[3] Thus intangible personalty, tangible personalty

[1] *History of Florence*, iv., p. 14 (vol. i., p. 181 of Detmold's translation).

[2] Canestrini, *La Scienza e l'Arte di Stato. L'Imposta sulla Richezza Mobile ed Immobile* (1867), i., pp. 108, 115, 321, *etc.*

[3] In 1633 it was decided that "the assessments are to be according to the visible estates, real and personal, of the inhabitants." Sir Anthony Earby's Case, 2 Bulstrode, 354.

kept in the owner's hands, earnings from personal abilities, and profits from moneys invested or lent at interest in another parish were exempt as being either unproductive, invisible, or not possessing a local *situs*.[1] The only property not excluded by these conditions was stock in trade, but it was not until the industrial revolution toward the close of the eighteenth century that the matter became of importance. Lord Mansfield in 1775 showed the impolicy of such action;[2] but although the liability of stock in trade was hotly disputed, it was affirmed by Lord Kenyon in 1795.[3] The results were doubly disastrous in the places where it was tried: the early success of the experiment led the justices of the peace to begin that improvident method of poor relief known as the allowance system;[4] and the practice of rating stock in trade, which was confined to the old clothing district in the south and west of England, resulted in the rapid decline of the ancient staple industry and a transfer of the business to Yorkshire, where personalty was not assessed.[5] When the principle was tested in another district in 1839, the courts again upheld the practice.[6] As a consequence, a law was passed which exempted personalty from taxation,[7] but it was powerless to bring the trade back to its old channels. The exempting law

[1] *Report of the Poor Law Commissioners on Local Taxation*, 1843, 8vo edition (1844), pp. 43 *et seq.*, and especially pp. 34–38. This contains the best history of local taxation in Great Britain.

[2] Rex *vs.* Ringwood, 1 Cowp. 326.

[3] Rex *vs.* Mast, 1 Bott. 204. For a detailed statement of the case see Appendix A to the *Report of the Poor Law Commissioners on Local Taxation*, 1843, nos. 35–94. The existence of the general property tax can still be seen in 1791. *Cf.* Rex *vs.* White, 4 T. R. 771.

[4] By the *Speenhamland Act* of 1795. See *First Annual Report of the Poor Law Commissioners*, 1835, p. 207.

[5] *Report of the Poor Law Commissioners on Local Taxation*, 1843, 8vo edition, p. 38.

[6] Queen *vs.* Lumsdaine, 10 Adol. and Ellis, 157.

[7] 3 and 4 Vict., chap. 89, provided that it should not be lawful "to tax any inhabitant in respect of his ability derived from profits of stock in trade or any other property," except "lands, houses, tithes impropriate, propriations of tithes, coal mines, or saleable underwoods."

was enacted for only a year, but it has been annually renewed ever since.[1] Thus for the last half century the local property tax in England has been legally as well as actually a tax on productive real estate alone.[2]

History thus everywhere teaches the same lesson. As soon as the idea of direct taxation has forced itself into recognition, it assumes the practical shape of the land tax. This soon develops into the general property tax which long remains the index of ability to pay. But as soon as the mass of property splits up, the property tax becomes an anachronism. The various kinds of personalty escape, until finally the general property tax completes the cycle of its development and reverts to its original form of the real property tax. The property tax in the United States is simply one instance of this universal tendency; it is not an American invention, but a relic of mediævalism. In substance, although not in name, it has gone through every phase of the development, and any attempt to escape the shocking evils of the present by making it a general property tax in fact as well as in name is foredoomed to failure. The general property tax is impossible in any complicated social organism. Mediæval methods cannot succeed amid modern facts.

[1] By the Expiring Laws Continuance Act.

[2] Thorold Rogers, *Local Taxation, especially in English Cities and Towns*, p. 16. *Cf.* also Noble, *Local Taxation*, p. 58; Palgrave, *Local Taxation in Great Britain*, p. 78; Goschen, *Reports and Speeches on Local Taxation*, p. 50; Phillips, "Local Taxation in England and Wales," in Probyn's *Local Government and Taxation in the United Kingdom*, p. 502; Bilinski, *Die Gemeindebesteuerung und deren Reform*, pp. 35 *et seq.* See also Hedley, *Observations on the Incidence of Local Taxation* (1884), who opposes the exemption of stock in trade and the recent attempts to get machinery exempted from ratability. *Cf.* G. H. Blunden, *Local Taxation and Finance*, 1895. Some interesting material may also be found in J. J. O'Meara, *Municipal Taxation at Home and Abroad*, 1894. The best works on the legal aspect of the question are Castle, *A Practical Treatise on the Law of Rating* (2d edition, 1886), and Boyle and Davies, *The Principles of Rating practically considered*, 1890.

III. *Theory of the Property Tax.*

While it is generally confessed that the property tax, as administered in the United States, is a failure, it is sometimes contended that if thoroughly executed it would be a just tax.[1] The theory of the general property tax, as set forth in almost all our state constitutions, is held to be correct in principle. Is this true?

In the first place we must disabuse ourselves of the idea that property, as such, owes any duty to pay taxes. The state has direct relations not with property, but with persons. It is the individual who, from the very fact of his existence within the state, is under definite obligations toward the state, of which the very first is to protect and support it. The state, indeed, can exist without the particular individual, but the individual cannot exist without the state. Every civilized community professes to tax the individual according to his ability to pay, which may, indeed, be measured by his property or by any other standard. In the last instance, however, it is the individual who really owes this duty.

But is property the true test of ability? In primitive communities it is to a certain extent. Every freeman is a proprietor, and all are supported by the produce of the land. Comparative equality of wealth gives comparative equality of opportunity, and the finer differences in ability to pay are not yet recognized. In the early stages of society property is indeed a rough test of ability.

But a change soon sets in. As society differentiates, classes arise who support themselves not from their property, but from their earnings. Manifestly he who earns a salary cannot be declared entirely devoid of ability to pay, as compared with one who receives the same amount as interest

[1] "While there is no fairer or better mode of taxation than the *ad valorem* system properly and justly administered, there is none more oppressive or unjust and unequal when loosely or imperfectly executed." *Report of the Comptroller-General of Georgia,* 1894, p. 5.

on a principal, or as profits on property. Moreover, the productiveness of property becomes a controlling element in calculating the owner's ability. Of two factory owners, one may be running full time and making large profits; the other may be compelled to keep his factory closed, earning nothing. Of two landowners, one may employ improved processes and enjoy a large product; the other, although on equally valuable land, may suffer climatic reverses and produce far less. Of two capitalists, one may invest his property so as to obtain large proceeds; the other may put an equal amount into an enterprise which yields very little. It is plainly incorrect to say that the ability in these cases varies with the property. The test of ability is shifted from property to product, proceeds or earnings.

The truth of this principle is faintly recognized in the legislation of all countries one step removed from the primitive tax system. Its application can be seen in some of the mediæval town taxes, where the earnings of the artisans and tradesmen were taxable, as evidences of ability or faculty, side by side with the property of others. It can be seen also in various attempts of mediæval states to tax the proceeds or rents of land, the salaries of officials and the products of individual exertion. In like manner, it can be seen in the early legislation of the American colonies. Thus the tax law of 1634 in Massachusetts Bay provided for the assessment of each man "according to his estate and with consideration of all other his abilityes whatsoever." The measure of ability, however, was still property, as appears from the provision of 1635 that "all men shall be rated for their whole abilitie, *wheresoever it lies.*" By 1646, the glimmering of the new idea is seen; for the law now provides not only for rating of all "estates, both real and personal," but also for the taxation of "manual persons and artists," who "are to be rated for returns and gains proportionable unto other men for the produce of their estates." In other words, not only property but product was taken into account. In many of the other American colonies,

also, the profits of certain classes were taxable like the produce of estates, by what was known as the faculty tax or the assessment on the faculty.[1] We see, therefore, how wide of the mark is the recent statement that the system which the Americans instinctively adopted was "the equal taxation of property, the non-taxation of labor."

In the colonies, indeed, these laws mark only the first faint attempts to substitute product for property as the basis of taxation. Later on, the distinction was lost sight of and the attempt abandoned. But in Europe the development continued and the basis of the tax system was changed from property to product. Thus taxes on land, houses, wages, salaries, interest, profits, *etc.*, gradually supplanted the property tax, and formed a more or less complete system based on product. In modern societies, as we have seen, the basis of taxation has very recently again shifted from product to income. The point here to be noticed is that throughout all Europe the mediæval basis of taxation — the mass of property — was abandoned because it no longer corresponded to the demands of justice. The property tax is theoretically unjust because property no longer measures the ability to pay — because property has been replaced by product as an index to faculty.

This is the reason for the failure of the property tax. It has, indeed, been contended by some, as, for instance, by President Walker, that the fatal defect of the property tax consists in its constituting a penalty on savings.[2] This criticism seems to be questionable, for the same objection would attach to any tax based on income just so far as income exceeds expenditures. An income tax on the surplus is equally a tax on savings. There is no difference in this respect between a property tax and this portion of an income tax. The only logical conclusion from this objection to the

[1] For the details of this development see my article on "The Income Tax in the American Colonies and States," in *Political Science Quarterly*, June, 1895 (vol. x., pp. 221-247).

[2] *Political Science Quarterly*, iii., p. 3.

property tax is a tax on expense. If we wish to avoid taxing savings, we must tax only expenditure. And yet President Walker correctly opposes the expense tax as the most unjust of all. The property tax is unjust, not because it is a penalty on savings, but because property is no longer a measure of ability.

There is not a single scientist of note who upholds the property tax as the sole or chief direct contribution. Some of the German writers on finance do, indeed, advocate a general property tax, but simply as a subordinate supplement to all existing direct taxes,[1] and mainly as an adjunct to the income tax, in order to tax income from property more than professional or individual earnings. These writers, however, overlook the fact that the same result may be attained by making a difference in the rate of the income tax, as in Italy. Above all, the continental countries have been so long exempt from the general property tax that the European writers have given it very little attention, have forgotten its shortcomings and have failed to analyze its inherent defects.

One other argument of somewhat more weight is sometimes advanced in favor of the property tax, *viz.*, that under any other system unproductive property, like jewelry, art collections, unimproved lands, *etc.*, would be exempt. This consideration at its best does not justify a general property tax, but a tax on special kinds of property. Entirely apart from the impolicy of taxing art collections, or the impossibility of discovering jewelry, or the utter insignificance of this kind of property when compared with the total national wealth, the argument is defective. The conversion of capital into unproductive wealth of itself destroys the revenue, which is the only true fund for the payment of taxes. It is undeniable that if the property were productive, and if the tax were levied on the product, the owner would pay a

[1] *Cf.* Gustav Cohn, *Finanzwissenschaft*, § 475: "Neben der Erwerbsbesteuerung bleibt für die Besitzbesteuerung heute nur ein beschränkter Raum übrig." See the English translation, p. 566: "The taxation of earnings as it exists to-day leaves but scant room for taxes on possessions."

larger sum. But on the other hand, his revenue would be still greater and his annual surplus above the tax would constitute an ever-increasing productive fund. To leave unproductive property free may thus indeed lessen the share of the government, but seems to be nothing more than justice to the individual. His renunciation of revenue diminishes *pro tanto* his tax-paying ability. It is really only because of the belief that the possession of these articles of consumption involves an expenditure for their maintenance, or forms an indirect proof that their owner is able not only to retain these articles of luxury, but also to live in comfort on his income, that we attempt to tax this kind of property. In other words, just as relative expenditures of certain kinds afford a rough criterion of a man's income, because his standard of living usually bears a fairly definite relation to his income, so the taxation of special articles of property may really be considered an indirect way of getting at relative revenue. But precisely because it is very rough and indirect, it is in the main unsatisfactory.

The great element of reason in the demand for the taxation of unproductive property is to be found in the assessment of real estate. It is an undoubted fact that real estate is often held for speculative purposes, and that it is the duty of the community not to encourage such speculation by exempting vacant lands from taxation. The owner expects to reap from the future value of the land, whether he sells or keeps it, a sum more than sufficient to recompense him for his outlay and intervening loss of interest and profit. He is prospectively earning an annual revenue from the land, whose present unproductiveness is technical rather than real. It is thus perfectly logical to tax unproductive real estate even though the basis of taxation be product rather than property. It is the estimated, rather than the actual, product that is taxed.

But even granting that there is this justification for a tax on certain forms of unproductive property, it would not strengthen the case for a general property tax. At best it

would simply mean that the tax on product should be supplemented by a tax on certain kinds of unproductive property, which are really prospectively productive. No one has ever objected to a real estate tax, whether it be levied on the basis of value or of assumed product. But a real estate tax is not a general property tax ; the principle of the real estate tax does not signify that property in general should be made the test of ability to pay. We may, therefore, still assert that if there are any evils arising from the absence of a general property tax, they are slight when compared to the evils inseparable from its existence.

IV. *Conclusion.*

From the preceding survey it is difficult to escape the conclusion that the general property tax as the main source of public revenue is a failure from the triple standpoint of history, theory and practice.

Historically, the property tax was once well-nigh universal. Far from being an original idea which the Americans instinctively adopted, it is found in all early societies whose economic conditions were similar to those of the American colonies. It was the first crude attempt to attain a semblance of equity, and it at first responded roughly to the demands of democratic justice. In a community mainly agricultural, the property tax was not unsuited to the social conditions. But as soon as commercial and industrial considerations came to the foreground in national or municipal life, the property tax decayed, became a shadow of its former self, and while professing to be a tax on all property, ultimately turned into a tax on real property. The disparity between facts and appearances, between practice and theory, almost everywhere became so evident and engendered such misery, that the property tax was gradually relegated to a subordinate position in the fiscal system, and was at last completely abolished. All attempts to stem the current and to prolong the tax by a more stringent administration had no

effect but that of injurious reaction on the *morale* of the community. America is to-day the only great nation deaf to the warnings of history. But it is fast nearing the stage where it, too, will have to submit to the inevitable.

Theoretically, we have found that the general property tax is deficient in two respects. First, the theory presupposes that there is an ascertainable general property — a definite surplus of assets over liabilities. In primitive social conditions this is true; there is a composite mass of property, because there is no industrial differentiation. But in the modern age property is split up into a hundred elements, so that if we attempt to tax each element separately, it is often impossible to decide from which category deductions are to be made for indebtedness. An individual, for instance, owes more on his book accounts than is due to him. Granting that he therefore pays no tax on his book accounts, shall he be permitted to deduct this surplus of debt from the value of his real estate? This is manifestly inadmissible. And yet unless this is done he is taxed not on his property, but on his surplus of debt — not on his real assets, but on what he owes; not on his ability, but on his liability. The theory of the property tax is not carried out; and it cannot be carried out because the conditions of the theory fail. The general mass of property has disappeared, and with it vanishes the foundation of the general property tax.

Secondly, the property tax is faulty, because property is no longer a criterion of faculty or tax-paying capacity. Two equal masses of property may be unequally productive, and hence unequally affect the margin of income from which the public contributions are paid. The standard of ability has been shifted from property to product; the test now is not the extent, but the productivity, of wealth. And since revenue is a better index than wealth, the vast class of earnings derived not from property but from exertion is completely and unjustifiably exempted by the taxation of property alone. The theory of the property tax again fails because the conditions of the theory have disappeared.

Practically, the general property tax as actually administered is beyond all doubt one of the worst taxes known in the civilized world. Because of its attempt to tax intangible as well as tangible things, it sins against the cardinal rules of uniformity, of equality and of universality of taxation. It puts a premium on dishonesty and debauches the public conscience; it reduces deception to a system, and makes a science of knavery; it presses hardest on those least able to pay; it imposes double taxation on one man and grants entire immunity to the next. In short, the general property tax is so flagrantly inequitable, that its retention can be explained only through ignorance or inertia. It is the cause of such crying injustice that its alteration or its abolition must become the battle cry of every statesman and reformer.[1]

[1] I do not wish to be understood as favoring either the exclusive taxation of real estate or the single tax on land-values. Even as the sole direct taxes, these forms are inadequate, as will be shown in the succeeding chapters.

AMERICAN BIBLIOGRAPHY OF THE GENERAL PROPERTY TAX.[1]

1. AMES, JOHN H. The Taxation of Personal Property. Des Moines, 1877.
2. AMES, JOHN H. The Taxation of Real Property and Corporations. Des Moines, 1878.
3. ANDREWS, GEORGE H. Taxation. Address . . . before the Assembly Committee of Ways and Means of the State of New York. New York, 1871.
4. ANDREWS, GEORGE H. Unequal State Taxation. New York, 1875.
5. ANDREWS, GEORGE H. Taxes and Assessments in New York City. New York, 1876.
6. ANDREWS, GEORGE H. Twelve Letters on the Future of New York. New York, 1877.
7. BROWN, FREDERICK J. Short Talks on Taxes with special reference to the Hayes Bill of 1892. Baltimore, 1891.
8. COCHRAN, THOMAS. Local Taxation. Philadelphia, 1871.
9. COCHRAN, THOMAS. Methods of Valuation of Real Estate for Taxation. 1874.
10. CROCKER, GEORGE G. An Exposition of the Double Taxation of Personal Property in Massachusetts. Boston, 1885.
11. CROCKER, GEORGE G. The Injustice and Inexpediency of Double Taxation. Boston, 1892.
12. DANA, RICHARD H. Double Taxation, unjust and inexpedient. Boston, 1892.
13. DOUGLAS, CHARLES H. J. Financial History of Massachusetts. Columbia College Studies in History, Economics and Public Law. Vol. i., no. 4. New York, 1892.
14. ELY, RICHARD T., and FINLEY, J. H. Taxation in American States and Cities. New York, 1888.
15. ENDICOTT, WILLIAM, Jr. The Taxation of Tangible Things. Boston, 1875.
16. ENSLEY, ENOCH. The Tax Question: What should be taxed and how it should be taxed. Suggestions for the People of Tennessee to consider. Nashville, 1873.
17. HAMILTON, JOHN. The Tax Problem. An Address delivered at the Annual Meeting of the Pennsylvania State Board of Agriculture. Harrisburg, 1891.
18. HINCKLEY, ISAAC. Unequal Taxation in Delaware. Philadelphia, 1875.

[1] For the official reports, see *infra*, chap. xiii. For a bibliography of the corporation tax, see *infra*, chap. viii.

19. HILLS, THOMAS. Address on Taxation. Boston, 1890.
20. LANE, JONATHAN A. Address on Taxation at a Meeting of the Boston Executive Business Association. Boston, 1891.
21. MINOT, WILLIAM, Jr. Local Taxation and Public Extravagance. Boston, 1877.
22. MINOT, WILLIAM, Jr. Taxation in Massachusetts. 2d edition. Boston, 1877.
23. PEABODY, A. P. Address on Taxation. Boston, 1833.
24. PERRY, A. L. Extra-territorial Taxation. Boston, 1875.
25. QUINCY, JOSIAH P. Double Taxation in Massachusetts. Boston, 1889.
26. RIPLEY, WILLIAM Z. Financial History of Virginia. Columbia College Studies in History, Economics and Public Law. Vol. iv., no. 1. New York, 1893.
27. ROPES, JOHN C. Taxation of Mortgaged Real Estate. Boston, 1881.
28. SCHWAB, JOHN C. History of the New York Property Tax. American Economic Association. 1890.
29. SHEARMAN, THOMAS G. Taxation of Personal Property, impracticable, unequal and unjust. New York, 1895.
30. SHERMAN, ISAAC. Exclusive Taxation of Real Estate and the Franchises of a few specified moneyed Corporations and Gas Companies. New York, 1875.
31. WALKER, FRANCIS. Double Taxation. Columbia College Studies in History, Economics and Public Law. Vol. v., no. 1. New York, 1895.
32. WELLS, DAVID A. Theory and Practice of Local Taxation in the United States. Boston, 1874.
33. WELLS, DAVID A. The Reform of Local Taxation. Boston, 1876.
34. WHITMORE, WILLIAM H. Unjust Taxes. A Criticism of the Massachusetts System of Local Taxation. Boston, 1877.
35. WILLIS, BENJAMIN A. Remarks on the Bill providing for the Exemption of Mortgages on Real Estate from Taxation. New York, 1873.
36. WOOD, FREDERICK A. History of Taxation in Vermont. Columbia College Studies in History, Economics and Public Law. Vol. iv., no. 3. New York, 1894.
37. WORTHINGTON, T. K. Historical Sketch of the Finances of Pennsylvania. American Economic Association. 1887.
38. Municipal Taxation. Argument submitted to the Revisory Commission [by R. W. Knott and A. W. Humphrey]. Louisville, 1892.

CHAPTER III.

THE SINGLE TAX.

AMONG the schemes for social and tax reform, few have been more earnestly and enthusiastically supported than the single tax. Many persons, however, have only a faint idea of what the scheme really is; while others have been so influenced by the specious arguments of its advocates, that they have not troubled themselves to investigate the problem from the standpoint of exact economic knowledge. Let us attempt, in the following pages, to explain the nature of the single tax and to state the objections that may be urged against it.

I. *What is the Single Tax?*

In the first place, the single tax denotes, as its name implies, the only tax, the exclusive tax, the tax on some one class of things. The idea that the wants of the state may be supplied by such a tax is not a new one. During the seventeenth and eighteenth centuries, a band of reformers in England as well as on the continent put forward the idea of a single tax on expense.[1] So many of the privileged classes had succeeded in securing exemption from the various direct taxes, that it was hoped to realize a substantial universality of taxation by taxing everybody on his expenditure; and since it was supposed that this tax could be evaded by no one, it was for a time very popular. Later on in the eighteenth century, there was a party in England, whose motto was a single tax on houses. Again, at the beginning of this century, the experience of England with the income tax led a

[1] *Supra*, p. 10.

number of writers on the continent to advance the plan of a single tax on incomes. Finally, during the past few years, in France the project of a single tax on capital has been enthusiastically advocated not by socialists, but by some conservative reformers. The single tax of Henry George is thus simply the last of many similar schemes that have been propounded; and it is not improbable that after it has disappeared economists of the future will be occupied in dealing with yet another form of single tax.

The present scheme is a single tax on land values — that is, a tax on the value of the bare land irrespective of the buildings or other improvements in or on the land. Curiously enough the taxation of land has been supported by two lines of argument which are fundamentally opposed. Thus over twenty years ago Mr. Isaac Sherman, an eminent citizen of the city of New York, proposed a plan by which all state and local taxes at least were to be levied on real estate. Mr. Sherman and his followers confessed that taxes ought to be borne by the whole community. They favored the taxation of land on the theory that the tax would be shifted from the landowner to the consumer, and would thus be diffused throughout the community. As every one is a consumer, each would in the end bear his share of the burden. The tax would, moreover, have the additional merits of simplicity and convenience.

Many people to-day declare their adhesion to a tax on land for this reason. But it is remarkable that what constitutes the chief advantage of the tax in the eyes of this party is regarded in precisely the opposite way by the real advocates of the single tax on land values. Mr. Sherman said that the tax on real estate is to be recommended because it falls only nominally on the owner, and is in fact shifted to the consumer. Mr. George says that the tax on land values will stay where it is put, namely, on the landowner, and that it is to be recommended precisely because it will *not* be shifted to the consumer. The difference between the two theories could not be more fundamental.

As between these two theories, there is a substantial consensus of opinion among economists that Mr. George is correct. From the time of Ricardo, it has been well-nigh universally confessed that a tax on land values, *i.e.* a tax on economic rent, will fall wholly on the owner.[1] This is precisely the reason why the scheme is advocated by the single-taxers, who desire to tax the landowner out of existence — to take away from the owner of the land all his revenue rights in the land. The essential antagonism between the two schemes, therefore, cannot be emphasized too strongly. The one desires a land tax because it will be borne by the whole community; the other desires a tax on land values because it will be borne *not* by the whole community, but by a particular class. Yet many persons who really favor the former theory mistakenly give their adhesion to the latter. There are many so-called single-taxers who simply believe that a land tax is the most convenient of all methods for securing the desired equality of burden. In reality, there is no kinship between them and the single-taxers proper. Mr. George warns us not to confuse a tax on land with a tax on land value.

II. *The General Theory.*

The general economic theory on which the demand for the single tax is based may be summed up in a few words. Land is the creation of God; it is not the result of any man's labor; no one, therefore, has a right to own land. Increase in the value of land is due mainly to the growth of the community; like the land itself, it is not the result of any individual effort; it is an unearned increment which properly belongs to society. Moreover, private property in land is undoubtedly the cause of all social evils. It therefore becomes the duty of the government to take what rightfully belongs to the whole community. Every one may still retain the result of his own labor; but the value of the bare land,

[1] See the author's *The Shifting and Incidence of Taxation* (2d ed.), p. 223.

the economic rent, must be taken for the state. In this way, and in this way alone, can the social problem be solved. The consequences are epitomized as follows in the platform of the Single Tax League: "It would solve the labor problem, do away with involuntary poverty, raise wages in all occupations to the full earnings of labor, make over-production impossible until all human wants are satisfied, render labor-saving inventions a blessing to all, and cause such an enormous production and such an equitable distribution of wealth as would give to all comfort, leisure, and participation in the advantages of an advancing civilization."

This is an inviting prospect. It is not so much a method of tax reform, as a panacea for human ills, that is here set forth. It would be interesting to discuss this fine fabric of the ideal. But we must be more modest and confine our attention to the scheme primarily as a practical method of tax reform.

In order to attain a basis for this discussion, it is necessary to allude to the two fundamental doctrines on which the plan is founded. The first is the underlying theory of private property; the second is the theory of the relation of the individual to the public purse.

In the first place, the single-tax theory of property is the labor theory — the theory that individual human labor constitutes the only clear title to property. It would be interesting, were there space, to trace the genesis of this doctrine. The Romans, as is well known, had an entirely different theory — the occupation theory, based on the right of the first occupant. Against this rather brutal doctrine, which in the early middle ages paved the way for intolerable abuses, the philosophers advanced the labor theory, hoping thereby to bring about a reform in actual institutions. The labor theory went hand in hand with the doctrine of natural rights, which was the result of an earnest attempt to abolish the abuses of the *ancien régime*, and which came to a climax in the eighteenth century.

Modern jurisprudence and modern political philosophy, however, have incontestably proved the mistake underlying this assumption of natural law or natural rights. They have shown that natural law is simply the idea of particular thinkers of a particular age of what ought to be law. These particular thinkers, indeed, often influence the social consciousness, as they in turn are influenced by it, so that natural law may be called law in the making. But at any given time it represents simply an ideal. Whether that ideal will approve itself to society depends on a variety of circumstances, but chiefly on the question whether society is prepared for the change. Just as the modern method of jurisprudence is the historical method, so also the modern theory of property may be called the social utility theory.[1]

The social utility theory says that just as all law, all order and all justice are the direct outgrowths of social causes, and just as private ethics is nothing but the consequence of social ethics, so private property is to be justified simply by the fact that it is the last stage of a slow and painful social evolution. At the outset, property, and especially property in land, was largely owned in common. It was only through the gradual progress of economic and social forces that private property came to be recognized as tending on the whole to further the welfare of the entire community. The social utility theory does not, of course, mean that what has once been must always be. It is not a reactionary doctrine which looks upon all that is as good. It simply maintains that the burden of proof is always upon the party urging the change; and that when the change advocated is a direct reversal of the progress of centuries, and a reversion to primitive conditions away from which all history has travelled, the necessity for its absolute proof becomes far stronger. The nationalization of land

[1] For the best exposition of the insufficiency of the doctrine of natural rights, a discussion of which would be out of place here, the reader is referred to Ritchie, *Natural Rights*, 1895; and, with special reference to the land question, to Huxley's essay on "Natural Rights," in his *Collected Essays*.

is a demand which, in order to win general acceptance, must be based on theories independent of the doctrine of natural rights.

Even though we accept the theory of natural rights, we need not therefore accept the single tax. If it be said that the value of land is wholly the work of the community, and that therefore every one has a natural right to it, how can we logically deny that the value of any so-called product is, at least partly, the work of the community? Mr. George bases his defence of private property in commodities other than land on the labor theory. Yet individual labor, it may be said, has never by itself produced anything in civilized society. Take, for example, the workman fashioning a chair. The wood has not been produced by him; it is the gift of nature. The tools that he uses are the result of the contributions of others; the house in which he works, the clothes he wears, the food he eats (all of which are necessary in civilized society to the making of a chair), are the result of the contributions of the community. His safety from robbery and pillage — nay, his very existence — is dependent on the ceaseless co-operation of the society about him. How can it be said, in the face of all this, that his own individual labor wholly creates anything? If it be maintained that he pays for his tools, his clothing and his protection, it may be answered that the landowner also pays for the land. Nothing is wholly the result of unaided individual labor. No one has a right to say: This belongs absolutely and completely to me, because I alone have produced it. Society, from this point of view, holds a mortgage on everything that is produced. The socialists have been in this respect more logical; and that perhaps explains why the movement to which Mr. George gave such an impetus in England and elsewhere is fast changing from one in favor of land nationalization into one for the nationalization of all means of production. The socialists, indeed, as well as Mr. George, are in error, because the premises of each are wrong. It is not the labor theory, but the social utility theory, which

is the real defence of private property. But if we accept the premises of the single-taxers, we are inevitably impelled to go further than they do. The difference between property in land and property in other things is from the standpoint of individual *versus* social effort simply one of degree, not of kind.

The other fundamental doctrine of the advocates of the single tax is the theory of benefit, — the doctrine that a man ought to contribute to public burdens in proportion to the benefits that he receives. The theory is that, since the individual gets a special advantage from the community in the shape of unearned increment, he ought to make some recompense. To this contention, two answers may be made: first, that the benefit theory of taxation is inadequate; and second, that, even if it were true, it would not support the single tax. Let us take up these in turn.

It is pointed out in another chapter that the payments made by the individual to the government are exceedingly diverse in character.[1] Where the government acts simply as a private individual, in performing certain services for the citizen, the payment is a price. It is a case of *do ut facias*. The government does something; the individual gives something. Again, even after common interests have developed, the individual may ask the government to do some particular thing for him, to confer some privilege upon him. He may wish to get married or to run a cab. For this particular privilege it is perfectly proper that the government should make a charge — known in modern times as a fee or toll. Again, the government may be at considerable expense in laying out a new street, the result of which will be to enhance the value of a particular plot of ground. There is then no reason why the government should not demand that the owner of this plot should defray, at all events in part, the cost of this improvement. This is called a special assessment. In all these cases the individual receives an undeniable, special benefit as the result of a special expendi-

[1] *Infra*, chap. ix.

ture made by the government. The principle of give and take, therefore, is applicable.

On the other hand, there are certain actions of the government which interest the whole community, and from which the individual receives no benefit, except what accrues to him incidentally as a member of the community. If the government undertakes a war, no one citizen is benefited more than another. If the government spends money for cleaning the main thoroughfares, for erecting tribunals, or for patrolling the city by police, it cannot be claimed that any one individual receives a measurable, special benefit; all are equally interested in good government. When payment is made for these general expenditures — and such a payment is called a tax — the principle of contribution is no longer that of benefits or of give and take, but of ability, faculty, capacity. Every man must support the government to the full extent, if need be, of his ability to pay. He does not measure the benefits of state action to himself first, because these benefits are quantitatively unmeasurable; and secondly, because such measurement implies a decidedly erroneous conception of the relation of the individual to the modern state.

At one time the doctrine of benefit had a relative justification. A century ago, when the absolute rulers of central Europe loaded down their subjects with grievous burdens and devoted the profits to their own petty pleasures — when in France, for example, the peasant was taxable *à merci et miséricorde* of the nobility — it was natural that a school should arise to protest and to proclaim the principle of benefits. Their argument was that as the state protects everybody, everybody is under a duty to pay taxes; in other words, their plea was for universality of taxation. This was a distinct step in advance. Later on, however, the doctrine was stretched to assert that everybody should pay in proportion to benefits received, with the implication that if the state could not be proved to confer any special benefit on the individual, he should not be held to pay anything.

As thus extended, the theory has been rejected by well-nigh all the thinkers of the last fifty years. It is now generally agreed that we pay taxes not because the state protects us, or because we get any benefits from the state, but simply because the state is a part of us. The duty of supporting and protecting it is born with us. In civilized society the state is as necessary to the individual as the air he breathes; unless he reverts to stateless savagery and anarchy he cannot live beyond its confines. His every action is conditioned by the fact of its existence. He does not choose the state, but is born into it; it is interwoven with the very fibres of his being; nay, in the last resort, he gives to it his very life. To say that he supports the state only because it benefits him, is a narrow and selfish doctrine. We pay taxes not because we get benefits from the state, but because it is as much our duty to support the state as to support ourselves or our family; because, in short, the state is an integral part of us.

The principle of benefit, moreover, would lead us into the greatest absurdities. If we accept it, we must apply it logically; we must not restrict its beneficent workings to the landowner. As has been pointed out in another place,[1] the poor man, according to the theory of benefit, ought to be taxed more than the rich, because he is less able than the rich man to protect himself. It is, however, needless to discuss this point because, as we have seen in a previous chapter, ability to pay is not only the ideal basis of taxation, but the goal toward which society is steadily working. It lies instinctively and unconsciously at the bottom of all our endeavors at reform. When we say that indirect taxes are on the whole unfair to laborers, we mean that they are less able than the wealthier portion of the community to pay the tax. When we say that a corporation with large receipts should pay more than one with small receipts, we do so because we know that its ability to pay is greater. The principle of privilege or benefit is, therefore, not

[1] See my work on *Progressive Taxation in Theory and Practice*, p. 83.

the basis of taxation. It is the principle away from which all modern science and progress have been working. It is founded on a false political philosophy, and it can result only in a false political economy.

But even if we accept the principle of benefit or opportunity, it will not justify the demand for the single tax. This question, however, is so intimately interwoven with the problem of the justice of the single tax that we shall discuss it a little further on under that head.

III. *Practical Defects.*

Let us now leave the abstract discussion of principles and come to the objections that may be urged against the single tax as a practical method of tax reform. These defects may be summed up under four heads: First, the fiscal defects; second, the political defects; third, the moral defects; and, fourth, the economic defects.

1. *Fiscal Defects.*

One of the great aims of every sound financial system is to bring about an equilibrium of the budget — that is, to avoid a surplus as well as a deficit. Now, while many taxes may be suddenly lowered, not many of them can be made to give a suddenly increased yield. One of the cardinal principles of taxation, therefore, is elasticity, in order to secure which requires two conditions. In the first place, the source from which the tax is derived must be of such a nature that an increase of the rate will always mean an increase of the yield. There should be in the source of taxation a reserve power which can be drawn upon in case of need. Secondly, the revenue should be secured from a number of objects, so that the shrinkages or deficits temporarily due to the one class may be made good by the increase or surplus revenues of the other class. Among the elastic taxes is the income tax, and it is well known that in English finance one of the

chief functions of this income tax is to preserve the equilibrium of the budget. So again, certain taxes on commodities are often utilized for this purpose. The single tax on land values, however, is utterly inelastic; for since, according to the theory of its advocates, the total rental value is to be taken from the landowners, the single tax cannot be increased. Where nothing has been left, nothing more can be taken. In the case of an emergency there would, therefore, be no possibility of increasing the revenues. Even if the total land value were not taken, it would still remain true that a direct tax on the unimproved value of land is far more inelastic than other taxes; for when the supply is constant and the price is fixed only by conditions of demand, the selling value as well as the rental value is subject to far more fluctuations than in commodities where the supply may be diminished at pleasure. Furthermore, as we have seen, a single tax of any kind, whether on lands or on anything else, would be less elastic than a system of taxes where one may be played off against the other. Lack of elasticity is a serious defect in the single tax.

Another fiscal weakness of the single tax is that it inevitably intensifies the inequalities resulting from unjust assessments. We all know how difficult it is to carry out laws which provide for equal assessments. Under the real estate tax in the United States, for example, the assessors are usually sworn to rate the property at its actual or selling value, and the selling value of a piece of land or of a house is comparatively easy to ascertain; yet it is notorious that in no two counties, nay even in no two adjoining pieces of property, is the standard of assessment the same. Thus the report of the Iowa Revenue Commission of 1893, states that realty in Iowa was assessed at from seventeen to sixty per cent of the true value. It is well known, too, that in the city of Chicago adjacent plots of real estate are assessed at percentages of ridiculously varying degree. Now, it is manifestly not so easy to assess the land values,—that is, the bare value of the land irrespective of all improvement,—as it is to assess the selling

value of a piece of real estate. For instance, an acre of agricultural land near a large town may be worth $200; but if used for truck-farming, considerably more than $200 may have been expended on it during the last century or two. Who can tell how much of the $200 present value is the value of the bare land and how much is to be assigned to the labor expended? Under the present method we have at least a definite test — the selling value; under the new method we should have no test at all. There is every likelihood, therefore, that the difficulties of the present situation would be intensified. Moreover, under the present system, inadequate as it is, there is always a chance that the imperfect enforcement of a particular tax law will be offset by the assessment of other taxes, direct or indirect. Under the single tax not only would there be more difficulty than at present in making the original assessment, but the inequality of the assessment, which is inseparable from all democratic methods, would be seriously intensified by the very fact that it is a single tax.

2. *Political Defects.*

The adoption of the single tax means the total abolition of all custom houses and import duties; it means that there can be no such thing as a system of protection to home industry. Many would, it is true, favor the single tax precisely on this account; but there are some self-styled "single-taxers" who believe that as a matter of national policy there is a justification for import duties. Whatever we may think of the economic justification of import duties, it must be recognized that they may sometimes form an important political weapon. It is clear, however, that leaving the question of protection entirely aside, the adoption of the single tax will make it impossible to utilize import duties for political, fiscal or other purposes.

In the second place, the adoption of the single tax would render it impossible for governments to utilize the taxing

power as a political or social engine in any other way. For instance, the United States government now imposes a tax on the circulation of state bank-notes in order to bring about certain desirable results in the currency situation. Under the single tax this would be impossible. Again, the United States government levies a high tax on opium, not for the purpose of revenue, but in order to discourage the consumption of opium; and it also assesses a tax on oleomargarine, primarily in order to ensure the purity of butter. Under the single tax, all such efforts would be impossible. Finally, to mention only one other example, one of the chief methods of dealing with the drink question is through the imposition of high liquor licenses, the fiscal importance of which is only secondary. Under the single tax we should be prevented from attacking the problem in that way. Governments have always made use of the taxing power to regulate and to destroy, as well as to yield a revenue. Were the single tax to be adopted, this salutary power would be entirely taken away.

Thirdly, the political results of the single tax would be dangerous in another way. So far as there is any truth in the assertion that in a democracy it involves some risk for a small class to pay the taxes and for a large class to vote them, it is especially applicable to the single tax. Since the "unearned increment" would flow of itself, silently and noiselessly into the treasury, there would be no need of a budget; and the sense of responsibility in the citizens would be perceptibly diminished. It is well known that liberty has been intimately bound up with the contest against unjust taxation; the constitutional history of England is to a large extent a history of the struggle of the people to gain control of the treasury; the American Revolution was precipitated by a question of taxation; the French Revolution was brought about primarily by the fiscal abuses of the *ancien régime*. To take away, then, from the vast majority of citizens the sense of their obligation to the government, and to divorce their economic interests from those of the state,

would, especially in a democracy like that of America, be fraught with serious danger.

3. *Ethical Defects.*

The advocates of the single tax love to base their arguments on the ground of justice. In this they are certainly wise; for even though all other arguments were in its favor, if the justice of the single tax could be successfully impugned, it would be foredoomed to failure. Let us then ascertain whether it is indeed true that the single tax is an equitable method of taxation.

The two great canons of justice in taxation are universality and uniformity or equality. If anything has been gained by the revolutions of the eighteenth century and by the growing public conscience of the nineteenth, it is a recognition of the fact that all owe a duty to support the state, that a system of wholesale exemptions is iniquitous, and that all taxpayers should be treated according to the same standard. Judged by any or all of these tests, can it be seriously maintained that the single tax is an equitable form of taxation?

Toward the close of the eighteenth century, there was a school of French writers, the Physiocrats, who first advocated the plan of a single tax on land — the famous *impôt unique*. It was considerably talked about until Voltaire turned his caustic pen upon them and wrote the celebrated essay *L'Homme à quarante écus* — the man of forty crowns —, one of the most effective bits of mordant sarcasm ever written. Voltaire pictured the position of the French peasant toiling laboriously, amid conditions of unspeakable distress, but succeeding in getting from the soil a product equivalent to forty crowns. The tax-gatherer comes along, finds that the peasant can manage to keep body and soul together on twenty crowns, and takes away the other twenty. Then the peasant meets an old acquaintance, originally poor, who has been left a fortune of

400,000 crowns a year in money and securities. He rolls along the highway in a six-horse chariot, with six lackeys, each with double the peasant's income; his *maitre d'hôtel* gets 2000 crowns salary and steals 20,000; his mistress costs 80,000 crowns a year. "You pay of course half your income, 200,000 crowns, to the state?" asked the peasant. "You are joking, my friend," answered he, "I am no landed proprietor like you. The tax-gatherer would be an imbecile to assess me; for everything I have comes ultimately from the land, and somebody has paid the tax already. To make me pay would be intolerable double taxation. Ta-ta, my friend; you just pay your single tax, enjoy in peace your clear income of twenty crowns; serve your country well, and come once in a while to take dinner with my lackey. Yes, yes, the single tax, it is a glorious thing." This little picture, perhaps, did more than all else to nullify the efforts of the Physiocrats.

We shall later discuss the effects of the modern single tax on the farmer, but the principle underlying Voltaire's thought is equally applicable here. On what grounds of morals or justice shall the landowner be singled out for taxation?

We have seen that the theory of natural rights is not adequate; we have learned that the principle of opportunity does not correctly portray the relations of the individual to the state. Even if the theory of unearned increment were true it would not by any means justify the single tax on land values. In the first place, land values do not always or necessarily increase; and, secondly, there are a great many other values which do increase, and which increase mainly by the operation of forces which the owner of the property neither creates nor controls.

Land values do not always or necessarily increase. Thus, in the testimony given before the Rapid Transit Commission in the city of New York in March, 1895, one of the witnesses spoke of several long avenues being lined with the graves of property-owners. What did he mean?

Simply that ten, or twenty, or thirty years ago, certain individuals had invested in the land, in hopes of a rise in value, just as people invest in bonds or stocks or other securities. Instead of values rising, however, they remained stationary or even decreased; while, in the meantime, the accumulated taxes and assessments upon this non-productive property completely ruined many of the investors. It is indeed true that in most growing cities land values in certain localities will increase; but it is equally true that there are always sections in such cities where, for obvious reasons, land values decrease. These facts are familiar to all observers in large cities. Moreover, in some European countries the rental value of the land, as a whole, is less to-day than it was a few decades ago. The tax on land value would there yield only a precarious revenue, since there has been no unearned increment, but a decrement.

More important still is the fact that even though land values often increase, similar increase in value is not by any means confined to land. Let us ask any one whose mind is not befogged by the mist of erroneous enthusiasm: Who are the rich men of the world to-day? How has by far the greater part of our huge individual fortunes been acquired? Let us study the way in which men have become millionaires, especially in the United States. The usual cause is some fortuitous conjuncture of events, some chance happening due to no one's labor, but to a turn in the wheel of fortune — call it speculation, call it luck, call it by any name we will. How have most of the fortunes in Wall Street been made? Who is responsible for the increased value of investments? Who can say that the successful manager of the ring, the corner, the pool and the trust has worked out his salvation through his own industry? Land speculation is only a part, and a very small part, of the sum total. If it be claimed that the fortunate speculator deserves his fortune because of his sagacity and foresight, why deny these attributes to the landowner? It can, of course, not be denied that wealth has been acquired

by thrift and industry; but it remains true that most of the very large fortunes that strike the common observer are due to these incalculable turns in the wheel of fortune, and that the so-called unearned increment of land values forms only a small share of these total gains.

It must not be forgotten that the modern age is the age of speculation, differing from former periods in that "time speculation" has supplanted "place speculation." No economist would to-day venture to deny that speculation has its legitimate uses, and that the stock and produce exchanges of the present day play an indispensable part in the economy of our complex industrial society. But speculation is largely responsible for modern fortunes; and land speculation is simply a species in the larger genus. Value is a social phenomenon, not an individual phenomenon. A house in a desert is worth nothing; a house in a small town is worth more; a house in a large city is worth still more. The house is in part the product of labor, but the greater demand increases the value. A newspaper also is more profitable in a city than in a village. Thus, if social environment gives a value to bare land, the same social environment increases the demand for other commodities. If it be said that land differs from other things in that it is a monopoly, the answer is irresistible that if there is any one thing which distinguishes the modern age, it is the development of industrial monopoly; we live in a period of pools and trusts and economic monopolies of all kinds. So important, indeed, have these become that modern economic theory has been compelled to supplement the old doctrine of value which was based on the assumption of free competition by a newer and more comprehensive theory, especially applicable to all these modern forms of monopoly price. These monopoly profits cannot be reached by a tax on land values.

On what possible theory of justice, then, shall we tax the man who has invested $100,000 in land which the next year appreciates fifty per cent; and, on the other hand, exempt

the man who has invested $100,000 in the stock of the Sugar Trust, which the next year may also enhance fifty per cent? Why should the earnings invested in land be taxed and the earnings invested in the Sugar Trust be wholly untaxed? Why should the earnings invested in land be taxed and the earnings invested in any railway bond be wholly untaxed?

It might, indeed, be claimed that the railway stockholder will be affected by a tax on the land owned by the corporation: but it is difficult to see how the railway bondholder can be reached by any tax on land values except in so far as the ultimate security for his debt may be affected. As the bonded indebtedness of the railways to-day far exceeds their capital stock it appears that, even in the case of these industries whose increasing values are largely due to the influence of the community, the majority of investors would scarcely be touched. In the great mass of industries, of which the Sugar Trust is an example, where the land owned by the corporation is of exceedingly small consequence as compared with its other assets, it is plain that a tax on land values would not reach even the stockholders or the owners proper. Almost every industry, moreover, is dependent for its increasing profits upon the development of the community, that is, upon the increasing demand for the product. Land rises in value because there are more people who want to occupy that land; the earnings of the Sugar Trust have increased chiefly because there are more people who want sugar. In each case the increased returns are due primarily to social causes; in each case we have a monopoly. One is a natural monopoly and the other is an economic or artificial monopoly; but, for all practical purposes, there is no distinction between them. To confiscate the capital invested in land with the chance of the land either falling or rising in value, while exempting absolutely the capital invested in corporate or industrial securities, is but a travesty of justice. It will be impossible to convince the common people that so-called unearned increments are confined to land. As a

matter of fact the "unearned increment" of land is only one instance of a far larger class.

We must, on the contrary, plant ourselves firmly on the basis of faculty or ability to pay. So far as a man receives special opportunities from the community, which undoubtedly increase his ability to pay, they should be taken into account in framing any scheme of taxation. But let us not single out one special opportunity, because it strikes the eyes of urban observers, while we neglect all the other opportunities which are equally, or almost equally, the result of social forces. The single tax on land values is unjust; first, because opportunity is not the only element that must be taken into account; and, secondly, because, even though it were, revenues from land are by no means the only form — nay, not even the most important form — of the results of special opportunity. The single tax is unjust because it is exclusive and unequal.

But, even though the single tax were absolutely just in theory, it would not yet follow that it would be practicable. Let us, therefore, come to the final part of our inquiry.

4. *Economic Defects.*

These considerations which have often been overlooked, may be discussed from three points of view: first, the economic effect of the single tax on poor and new communities; second, the economic effect on farmers and the agricultural interests in general; third, the economic effect on rich communities.

In the first place, what would be the effect on poor and new communities?

When an American farmer goes to the virgin soil of the Northwest and stakes out his farm, he finds virtually no land value at all; land can be secured by any one on the payment of a merely nominal sum. The only property of these new farming communities consists of the log cabins erected on

the land; of the tools, implements and beasts of burden used for tilling the land; and of the personal effects and money that are in many cases brought along by the farmers. The great mass of their possessions, therefore, consists of personalty. In so far as there is any real property at all, it is only to an exceedingly slight extent composed of land values. There is practically no land value. How then, it may be asked, can taxes be raised in this new community? How can the roads be laid out, the schoolhouses be erected, and the other improvements be effected? Since land values are non-existent, a tax on zero must be zero. Even if any land values exist, the total confiscation of them would not suffice to defray any considerable part of the necessary expenditures. For proof, take any of the assessors' reports in the new American states, and it will be found that, contrary to the conditions of the rest of the country, the assessed personal property far exceeds in value the total assessed real estate. For instance, in 1890 personalty was to total realty in Montana as 58 to 55 millions of dollars, in Wyoming as 20 to 13 millions, in New Mexico as 28 to 15 millions, in Arizona as 18 to 10 millions. Compare these figures with the older sections, as New York or Pennsylvania, where the proportion was as 382 to 3404 millions and 618 to 2042 millions respectively.[1] If we are to abolish not only the tax on personalty, but all that part of the tax on realty which is not drawn from land values, it can easily be seen how impossible it would be to carry on government in these sections. A tax on the land values would be lamentably inadequate.

What has been said of new communities applies almost equally well to poor communities, that is, to communities made up largely or almost entirely of farm lands and of an agricultural population. The "single-taxers" themselves claim that land values amount to practically nothing in the farming districts. We shall see below the fallacy in this general

[1] These figures are taken from the census reports of 1890. See *Abstract of the Eleventh Census: 1890* (1894), p. 195.

contention; but so far as the community is a poor one there is undoubted truth in the statement that land values are trivial. If this is true, how can the expenses be defrayed by a single tax on land values? In the testimony recently taken before the tax commission of Massachusetts, one of the single-taxers who was testifying as to the situation in certain rural townships was asked the question: How will it be possible for this poor town, in which there is very little land value, to raise its taxes? The witness was compelled to reply that it would be impossible for the community to do so, and he suggested that the expenses of the poor communities should be defrayed in large part from the revenues of the rich communities.[1]

This remedy is somewhat visionary; for with the American theories of local government, it would be almost impossible to induce certain sections in the community to assume the burdens of other sections. We are all acquainted with the continual bickerings in our state taxation, due to the efforts of the richer counties to escape paying more than their proportion of the general state taxes; and we have recently seen the discontent aroused by an attempt in the shape of the federal income tax to make certain wealthy sections of the country pay the larger part of the revenue of the national government. Where these efforts have given rise to so much dissatisfaction, it is obviously out of the question to suppose that the purely local expenses of any community will ever be defrayed by the efforts of other communities. In local matters, at least, every county and

[1] *Hearings relating to Taxation*, 1893, pp. 185–188. The committee in its final report states: "Even Henry George admitted a few years ago [in an address at Boston, Feb. 22, 1889] that if his scheme were put into operation it would cause the savings banks and life insurance companies to fail, and that in an agricultural community it might be difficult to raise the money thought to be needed for municipal wants. But as a people could only have what the plan would furnish, they must economize and bring their wants within their means. This means, among other things, poorer schools and libraries, and therefore a more limited education for the young, and a less tender care of the aged and helpless who are cared for in our charitable institutions." *Report of the Joint Special Committee on Taxation*, 1894, p. 38.

town must stand on its own feet; and if the single tax is unable to defray even the local expenses of a poor community, not to speak of its share of general state or federal expenses, it is clearly beyond the realm of practical politics. In poor communities, as well as in new communities, the single tax would be an impossibility.

Let us consider, next, what would be the effects of the single tax on farmers in general. One of the claims of the advocates of the system is that it would relieve the farming population of the burden of taxes, now weighing upon them. A careful consideration of the facts shows, however, that this claim is unfounded, and that, on the contrary, the only result of the single tax would be to make the farmers pay more than they are paying to-day. This can be proved by recent statistics.

In only a few states is a distinction made in the assessments between land and improvements on land. Let us take, as a typical instance, Ohio county, in West Virginia, in which the city of Wheeling is situated. In the auditor's report for 1892, we find the following figures: —

	Ohio County.	Entire State.	Proportion of Ohio County. Per cent.
Value of buildings on lots,	$ 8,554,010	$ 22,840,511	
Value of buildings on lands,	671,795	14,371,855	
Total value of buildings,	$ 9,225,805	$ 37,212,366	25
Value of town lots without buildings,	4,409,152	14,453,321	
Value of land without buildings,	1,678,962	95,771,281	
Total value of all land without buildings,	$ 6,088,114	$ 110,224,502	5½
Total value of lands, lots and buildings,	15,313,919	147,685,972	10⅓
Value of personalty,	6,187,710	51,707,093	12
Present total assessments,	21,501,629	198,958,920	10½
Population,	41,000	763,000	5¼

In other words, whereas Ohio county now pays ten and one-half per cent of all taxes, and would pay about the same

if real estate alone were taxed, if the single tax were introduced it would pay only five and one-half per cent of the total taxes, or about one-half as much as at present. If the large towns would pay so much less, of course the farming districts would have to pay so much more. The improvements in the towns are worth more than the value of the bare land; while in the country districts the reverse is true.

As another example let us take California. In the comptroller's report for 1893, we find the following figures:—

County.	Value of Real Estate. (*i.e.* bare land.)	Value of Improvements on Real Estate.	Ratio of Land Values to Total Real Estate. Per cent.
Colusa,	$10,649,318	$1,283,265	89
Merced,	11,222,179	1,037,103	92
Tulare,	17,258,512	2,327,705	88
San Francisco,	193,872,645	82,584,775	70
Total state,	757,980,207	242,388,163	76

We thus see that while in the city of San Francisco improvements equal thirty per cent of the total real estate value, in some of the country districts improvements are only ten or fifteen per cent of the total. Taking the state as a whole, land values equal seventy-six per cent of all real estate, while in San Francisco land values are only seventy per cent of all real estate. To levy the single tax would, therefore, make San Francisco pay less, and some of the country counties far more, than at present.

Again, let us call attention to the report of the Commission on Valuation, made in 1892 to the Pennsylvania Tax Conference, which is probably the most careful attempt yet made to distinguish land values from improvements. We find the following figures:—

	Value of Land.	Value of Improvements.
Philadelphia county,	$357,007,936	$646,244,284
Purely agricultural land in Philadelphia county,	21,610,429	3,813,605
Entire state, all land,	1,881,334,522	1,754,525,949
Entire state, agricultural land,	725,485,439	245,494,072

The proportion of land values to total valuation of all property is, in the county of Philadelphia, thirty-six per

cent; in the agricultural counties of Sullivan and Greene, eighty-one per cent and seventy-five per cent, respectively; and in the whole state, fifty-two per cent. The Commission concludes: "As a rule, in agricultural counties the land values are the greatest, as would be expected; while in manufacturing counties and those having large cities, the value of the improvements is equal to that of the land, or greater."

Let us now choose some Western states. In the report of the auditor of Colorado for 1894 we find the following figures:—

Value of agricultural and grazing land, irrespective of improvements	$36,907,810
Value of improvements	7,492,022
Value of town and city land, irrespective of improvements	63,080,205
Value of improvements	34,788,941

In other words, in the towns improvements constitute about one-third of the total values; whereas in the country, improvements are only about one-sixth of the total.

As to Montana we find, in the report of the Board of Equalization for 1894, the following figures:—

Value of city and town lots	$29,362,754
Value of improvements on same	15,156,115
Value of land	17,493,680
Value of improvements on same	7,287,887

In Lewis and Clarke county, the home of the largest city in the state, the total value of all land was $11,397,860; that of improvements, $5,269,300. In some of the agricultural or grazing counties, however, the value of the land was far higher in proportion to the improvements; in Meagher county, for example, land was $1,821,385, while improvements were only $629,054. Most striking of all, in this very same county, in the case of agricultural property, the figures were, land $1,218,474, improvements $266,824; while in the town lots the figures were, bare land $602,911, improvements $362,375. In other words, not only are improvements

proportionately less in the rural counties, but even in these rural counties by far the larger proportion of the improvements are found in the little towns, as compared with the farming or grazing land proper.

In the state of Washington, the State Board of Equalization agreed on the following figures for 1893 : —

Value of land exclusive of improvements	$87,527,472
Value of improvements	8,970,908
Value of city and town lots	101,889,377
Value of improvements	29,585,930

In Utah, Salt Lake county, the seat of the chief city, assessed, in 1893, real estate, exclusive of improvements, at $31,347,670; improvements, at $9,483,141. In rural counties like Rich county and Cache county, the figures were, in the one case, realty $527,666, improvements $81,445; in the other case, realty $3,771,810, improvements $915,614. Here again, the more densely settled the township, the greater in proportion is the value of the improvements.

Finally, in North Dakota, the State Board of Equalization has fixed the valuation for 1894 at these remarkable figures:

Value of land exclusive of improvements	$55,887,303
Value of improvements	2,608,016
Value of town or city lots	4,400,642
Value of improvements thereon	4,756,331

In all these cases — and they might be multiplied *ad infinitum* — it is seen that the value of the improvements is, on the whole, greater in the urban than in the rural districts. To many this will be a surprise, because they are apt to be blinded by the immediate facts about them. The single tax advocate generally lives in the city, and sees before him a city lot, each foot of which will sell for hundreds or perhaps thousands of dollars. The town lot, he is apt to exclaim, is worth hundreds of times as much as a piece of land in the agricultural districts. This is perfectly true; but it proves nothing as to the comparative ability of their owners to pay taxes because it overlooks a point of the greatest im-

portance. When we compare urban with agricultural land values, we do not compare foot with foot, but total units with total units. Thus, an acre of land in New York City may be worth a thousand times as much as an acre of land in the country; but it must be remembered that there are many thousand times as many acres in the country as there are acres in New York City. A lot in New York may be worth ten thousand dollars, but a farm of five hundred acres in the country may also be worth ten thousand dollars, exclusive of improvements. We must, therefore, compare, not the value per foot in the New York lot with the value per foot in the country farm, but we must compare the value of the New York lot with the value of the country farm. The farmer who has paid ten thousand dollars for his farm, and has then proceeded to improve and cultivate it, will not be satisfied, when the assessor taxes him, and exempts all the business men, house-owners and security holders in the adjoining village; he will not be satisfied with the statement that the owner of a ten-thousand-dollar lot in New York City pays a hundred times as much per front foot. He will be apt to reply that it makes no difference to him whether the New Yorker's ten thousand dollars is taken away; but that he objects to his own ten thousand dollars being taken away, while his neighbors in the village, who are far richer than he, pay no taxes at all. In short, while attention is directed to the fact that land values are undoubtedly less per acre in the country than in the city, it is forgotten that the number of acres in the country is so many times larger than the number of acres in the cities that the total land values in the country will form a large part of the whole. Moreover, we have seen that the value of improvements is greater in the towns than in the country. In the country the farmhouse is built for five hundred dollars; in the city the fine stone mansion or steel business edifice is erected at a cost of thousands or hundreds of thousands of dollars. If, therefore, all improvements were to be entirely exempted, the only result of a tax on land values would be to make the

farmers pay more than they do at present. It is not denied that as between the general property tax as actually administered and a tax on real estate only, the farmer would be benefited by the adoption of the latter. For personal property, as has been elsewhere explained,[1] is assessed, chiefly in the agricultural communities. The remedy, however, consists not in taxing only real estate, but in striving to reach the abilities of the owners of personal property by some other method than that of the antiquated general property tax. But even assuming that this reform cannot be effected, what the farmers would gain by the abolition of the personal property tax, they would lose and far more than lose, as we have seen, by the total exemption of all improvements.

No wonder the farmers realize that this will ruin them. Immunity from indirect taxes would be dearly purchased at such a price; for it would result in the destruction of the one class above all others upon which our prosperity rests — the class of independent small farmers. As long as the United States remains pre-eminently an agricultural community, it is not likely that the single tax will become a practical question.

Thirdly, and finally, let us consider the economic effects of the single tax in rich urban communities.

It is contended by the single-taxers, with special reference to the advantages claimed as likely to accrue to the tenement-house population of the large cities, that the introduction of their system would bring about the social millennium. It is supposed that if we abolish the tax on improvements, that is, on houses, the vacant lots will be built over as if by magic, rents will fall, the wages of the workmen will rise, and a period of general prosperity will be ushered in.

It may be asked, in the first place, where all this additional capital which is to be invested in houses is coming from. There is no fund floating about in the air which can be brought to earth simply by the imposition of the single

[1] *Supra*, p. 32.

tax; the amounts to be laid out in houses must be taken from the capital now invested in some other form of productive enterprise. The amount of loanable capital in the money market at any one time is definitely fixed. Even deposits in banks are already invested, for the most part, in mortgages or in corporate securities; that is, they are already utilized for productive purposes. What is put into new houses will, therefore, simply be so much taken away from other productive employments.

It may be asked next, how the rents of our tenement-house population will be reduced? The theory that a tax on houses is shifted to the consumer or tenant is true enough, provided that the tax be exclusive — that is, provided that nothing be taxed except houses. If, on the contrary, the house tax is simply a part of a wider system of taxation; if other forms of property are assessed like investments in land and in personal property; if a corporation tax is imposed to hit the investors in corporate securities; or if we have an income tax which is to reach general profits, — in all these cases the very conditions of the theory according to which a house tax is shifted disappear.[1] To the extent, then, that the house tax is not a single tax, the tendency for it to be shifted will be diminished. The only result, in this direction, of the single tax would be, as a matter of fact, that people would pay their rent to the state instead of to private individuals. We hear a great deal about the unoccupied lands held for speculative purposes in large cities; but it may safely be affirmed that south of Forty-second Street in the city of New York — the home of the major part of the tenement-house population — not one-fiftieth of one per cent of the building lots lie idle, and of these some lots are occupied as coal yards, and some adjoining factories or large establishments are used for storage purposes. How then would the single tax relieve the inhabitants of the slums? They will not go to the suburbs where there is an abundance of land, for the same reason that they do not go there now. Rent in the suburbs

[1] See *The Shifting and Incidence of Taxation* (2d ed.), pp. 243, 245.

is at present considerably less than in the slums, which are nevertheless crowded. The average workman plainly prefers to be near his work, and to enjoy the social opportunities of contact with his fellow-workmen, evenings as well as day-time. Above all, he cannot afford the expenditure of time and money, necessary for conveying the various members of his family to and from the suburbs. Even assuming, therefore, that there was some magic fund to cover the suburban lots with houses, the rents in the slums would scarcely be affected.

Finally, we may ask how the wages of the workmen are to be increased by the single tax. Wages can be increased only through an increase of capital or through an increase of the efficiency of the laborer. Taxation in itself cannot accomplish either of these results. To turn economic rent over to the state cannot increase capital one whit, nor can it augment the efficiency of the laborer. Not only can the single tax have no influence on the wages of labor, but as we have seen it cannot decrease the rentals of the tenement-house population. The whole fair dream of economic felicity thus resolves itself into mere mist, into mere nothingness; the tenement-house population would derive as little advantage as the American farmer from the single tax.

So far as there is any truth in the doctrine that land in or near cities is largely held for speculative purposes, the difficulty can be met by the enforcement of now existing laws. The tax laws of the American states everywhere instruct the officials to assess property at its true or selling value, but it is notorious that unimproved lots are, as a rule, considerably undervalued as compared with those on which improvements have been erected. If, then, we simply enforce the laws as they exist, it will be far more difficult for any one to hold land on speculation. But the desired purpose may be accomplished without invoking the aid of the single tax.

Furthermore, so far as there is an element of truth in the idea of unearned increment as applied to urban real estate, the problem is already, to a large extent, solved in America

by the system of special assessments which takes for public purposes, and precisely at the time of its creation, the increased value which may properly be said to be due to any positive action on the part of the community. By enforcing the tax laws as they exist to-day and by extending the law of special assessments to all the cases which are properly referable to the principle of benefits, we shall do as much as is under existing conditions either practicable or equitable.

IV. *Conclusions.*

We have studied the single tax from different points of view; and we have seen that it is defective fiscally, politically, morally and economically. We have learned, first, that it would be inelastic, and that it would intensify the inequalities resulting from unjust assessments; secondly, that although itself proposed chiefly from social considerations it would prevent the government from utilizing the taxing power for other social purposes, and that it would divorce the interests of the people from those of the government; thirdly, that it would offend against the canons of universality and equality of taxation, and that it would seriously exaggerate the difference between profits from land and profits from other sources; and finally, that it would be entirely inadequate in poor and new communities, that it would generally have an injurious influence on the farmer, and that even in the large urban centres it would exempt large sections of the population without bringing any substantial relief to the poorer classes.

It is clearly impossible to discuss in this place the wider claim of the single-taxers, that the application of their scheme would introduce the social millennium. If economists thought that the distinguished single-tax leader had solved this problem, they would enthrone him high on their council seats; they would reverently bend the knee and acknowledge in him a master, a prophet. But when he

comes to them with a tale that is as old as the hills; when he sets forth in his writings doctrines that have long since been refuted; when in his enthusiasm he seeks to impose a remedy which appears to them as unjust as it is one-sided, as inconsistent as it is inequitable,—they have a right to protest. This is not the first time that some enthusiast has supposed that he has discovered a world-saving panacea. The remedy for social maladjustments does not lie in any such lopsided idea; the only cure is the slow, gradual evolution of the moral conscience of mankind. We cannot solve the labor problem by any rule of thumb. Every student of history, of political philosophy, of economics, will tell us that the progress of the race has been slow and painful; that the world has advanced step by step; and that each successive step, to be enduring, must be founded on justice. To suppose for a moment that the social millennium will be ushered in by any one sudden change—even were the change not so lamentably inadequate as the one above discussed—is an evidence not of wisdom, but of short-sightedness.

Even as a method of tax reform, the scheme is, as we have seen, a mistaken one. Our system of taxation is far from being ideal, or even comparatively just; for we are still clinging, in a great degree, to mediaeval errors. But whatever be the much-needed reform, it is safe to say that neither the common people nor the student will ever accept a scheme which is palpably unjust, which abandons the whole ideal theory of modern taxation—that of relative ability or faculty—and which seeks to put the burdens of the many on the shoulders of the few.

CHAPTER IV.

DOUBLE TAXATION.

DOUBLE taxation in the simplest sense denotes the taxation of the same person or the same thing twice over.[1] This is at once a very old and a very new phenomenon. It is very old so far as it is founded on mere extortion, on the caprice of government and on the desire to raise revenues without any regard to the relative burden on the taxpayer. All government was at first based on might. Although this was the original cause of the double taxation of one man and the exemption of his neighbor, it is in modern times entirely overshadowed by the second cause, which is essentially of recent growth. We live in an age of industrial complexity and differentiation. In former times property rights were simple, and the little capital that existed was largely owned by the producer. To-day not only does the same capitalist invest in different enterprises, not only is the producer often dependent for a part of his capital on sums that belong to others, but the old geographical unity has been dissolved, and there is no necessary connection between the residence of the capitalist and the place where his capital is employed. A system of taxation, therefore, which may have been perfectly just under the older and simpler conditions, may now be entirely inadequate because of the failure of government to take account of these new

[1] For a careful treatment of this entire subject as applied to American tax problems, the reader can now be referred to the recent doctor's dissertation by a former student, Francis Walker, *Double Taxation in the United States*, published in the Columbia University Studies in History, Economics and Public Law, vol. v., no. 1 (1895).

complications in property rights. As a matter of fact, almost all existing double taxation in civilized nations is due to inattention to these modern industrial intricacies.

If we approach the subject of double taxation more closely, we are confronted by serious difficulties. There are almost as many kinds of duplicate taxation as there are kinds of taxes or of industrial relations. We find the term used with the utmost looseness, so that what may be in one state a very important species of double taxation may be quite insignificant in another. In the first state, then, the phrase "double taxation" always calls up a particular set of problems; while in the other state the same phrase will denote something entirely different. Let us therefore endeavor to give an analysis of the phenomena which, while not entering into the details of the problem, will explain the principle in all states.

There are two distinct categories of double taxation — that by competing jurisdictions or authorities, and that by the same jurisdiction or authority. The first is essentially geographical in character. It is partly due to the fact that modern wealth is more or less cosmopolitan. A man living in one state and owning property in another may be taxed on the same property by both states, because they compete with each other in claiming jurisdiction over that property. Not only is this true as between foreign countries, but it is equally true, and in fact of far greater importance, as between conflicting authorities in the same country. The separate commonwealths in a federal state, the separate counties in a commonwealth, the separate towns in a county — each and all of them may make conflicting claims on the same individual or on the same piece of property. Double taxation — or it may be triple or quadruple taxation — by competing jurisdictions is thus a product of the modern mobility of capital and labor; and with the growing importance of local taxation, the difficulties are multiplied.

It may happen, however, that a single authority — the same town, county, commonwealth or nation — is confronted

by essentially similar difficulties as to property or persons within its jurisdiction. Thus a man buys a piece of land, and borrows part of the purchase price from another man living in the same town. If the town taxes the value of the land, which in this case includes the value of the mortgage, and then taxes the mortgage, the question of double taxation immediately presents itself. So, again, if a man invests his property in the stock of a corporation doing business in the same place while the state taxes both the investor and the corporation, we are confronted by the same difficulty. In such cases the taxes are imposed by the same authority or jurisdiction. Let us discuss each class in turn.

I. *Double Taxation by the Same Authority.*

The simplest case arises when a person is taxed on his property, income or profits, while an additional tax is imposed on the property, income or profits of the business in which he is a partner. This is such a flagrant case of double taxation that it is not practised by any civilized government. For, clearly, the business income is to that extent the individual income. This case may therefore be neglected as of no practical moment.

The first important instance of double taxation arises when an attempt is made to tax property and also to tax income; or to tax either property or income, and also to levy a business or license tax. On this point there is much misconception; many consider this to be wrong, because it is double taxation. As a matter of fact, however, if all are put upon the same plane, the simultaneous taxation of property and of income works no injustice. If all the members of the class are treated alike, it makes no difference whether there is one single high tax on property, or a low tax on property and another low tax on the profits of the property. In fact, the government would be perfectly justified in taxing the property, the income of the property and also the expenses or any other attribute of the property. All such duplicate or

triplicate taxes are perfectly reasonable so long as they fall equally on all. Taken together, they amount simply to a high rate for a single tax on the property. Double taxation, therefore, is not always wrong; it is unjust only when one taxpayer is assessed twice while another in substantially the same class is assessed but once. It is the inequality of taxation that instinctively shocks us. But if all persons within the class are equally subjected to the burden, there can be no just complaint.

It may be objected that people are not treated alike when they pay different taxes on the same income. Our opinion must depend, however, entirely on the attitude we take toward what is called "differentiation" of taxation. If we maintain that all incomes should be taxed alike, irrespective of source, the objection would be valid. But modern theory has formulated the demand for a distinction between earned and unearned incomes, or between incomes from labor and incomes from property. Even so conservative a writer as John Stuart Mill was an adherent to this principle, which is at present quite generally admitted. This "differentiation" may be secured in two ways. A lower rate may be levied on labor incomes than on property incomes, as in the present North Carolina income tax, as in the former Virginia income tax, and as in Italy, in Holland and in some of the Australian colonies. But instead of making a difference in the rates, the same result may be reached by levying a uniform tax on all incomes and an additional tax on property, so that the income from property thus indirectly pays a higher rate. This is the case in Prussia and in some of the Swiss cantons, where the property tax and the income tax are levied on the same property. In other words, property income is put into a different class from labor income. It is taxed twice — once on property and once on income — because the seeming inequality is considered to be really a higher equality. It is double taxation, but it is not unjust double taxation.

In some places the principle of differentiation has not yet

been adopted. When the income tax is added to the property tax, the income from property already taxed is exempted, as in Massachusetts and in some of the Swiss cantons. Many difficulties have, however, arisen in the endeavor to distinguish these property incomes. Thus in Massachusetts the question presented itself whether the income from a business could be taxed, if the property invested in the business was already taxed. In a leading case this practice was upheld on the ground that business profits are the result not only of the capital invested, but of the industry and skill of the capitalist.[1] Although this is no doubt true, as a matter of fact the interpretation of the Massachusetts law is unjust because incomes derived solely from land or from other investments pay only once, while incomes derived from business enterprise pay twice, once on the property invested and again on the income derived. It is this inequality of the tax which renders the system crude and inequitable. This has been recognized in practice, and the custom has arisen for the assessor to allow six per cent on the capital invested in the business as representing the income from capital, and to levy the income tax only on the surplus profits. In the Swiss cantons similar provision is made by law and applies to incomes from all property, the amount exempted being four to five per cent of the capital. These figures are, indeed, entirely arbitrary, although they represent an interesting attempt to avoid double taxation.[2]

If, however, we accept the principle of differentiation, this attempt is to a certain extent unnecessary. The higher taxation of income from property as compared with income from other sources is theoretically defensible, although the exact amount of increase cannot be fixed *a priori*. It is only when the additional rate exceeds this amount that we

[1] Willcox *vs.* Middlesex, 103 Mass. 544. *Cf.* the interesting discussion in J. A. Lane, *Address on Taxation with Special Reference to Taxation upon Income derived from Property subject to Taxation*, Boston Executive Business Association, 1891. *Cf.* also *Report of the Special Commission on Taxation*, Boston, 1891.

[2] For some additional considerations, see *infra*, chap. viii., sec. ii.

can really speak of unjust double taxation. Up to that point it may indeed be double taxation, but it is not necessarily unjust taxation. We may, then, conclude that to tax property and also the income from property is not of itself inequitable, provided that the income from all property is taxed. To single out a special class, as is done in Massachusetts, does indeed involve injustice. But if the tax applies to all property, the simultaneous taxation of property and income is not of itself reprehensible double taxation. Incomes from property should be taxed higher than incomes from labor.

The second important case of double taxation is connected with the question of indebtedness. Shall debts be deducted from assessments for the property tax, or the interest on indebtedness from assessments for the income tax?[1] Is it double taxation to tax the creditor on the debt, and the debtor on the whole property including the debt?

Put in this way the answer is plain. A man must be taxed upon what he has, not upon what he has not. What he owes to another is not really a part of his property. The one great reason why the countries of continental Europe are changing their system from taxation of product to taxation of income, is that under the former method, which disregards the personal position of the individual, no deduction is made for indebtedness; whereas by the income tax such deduction is made, for net income can mean only the surplus above all necessary outlays — including interest on debts — connected with the acquisition of the revenue. Every income tax, whether in Europe or in America, therefore permits interest on indebtedness to be deducted.

What is true of the income tax is equally true, in theory, of the property tax. But the practical limitations to the application of the theory in the case of the latter, and more especially in the tax on personalty, are very considerable.

[1] The fullest study of this case is Heckel, *Die Einkommensteuer und die Schuldzinsen*, 1890.

The unfortunate experience of the United States has already been discussed.[1]

There is, however, one special phase of the question which is of widespread interest. In the case of a tax on land or on real estate, what should be done with the amount of the mortgage? The problem of double taxation arises, as in several of the American states, when the borrower or mortgagor is assessed on the full value of his land, and the lender or mortgagee is also taxed on the amount of the mortgage debt. If A, the owner of a $100,000 farm, borrows $50,000 from B, the state thus taxes $150,000, when there is really only $100,000 of property; and so far as B is able to shift his tax on A, the latter pays the taxes for both. On the other hand, if the mortgagor is allowed to deduct the value of the mortgage, and if the mortgage debt is not taxed at all to the mortgagee, the state loses a legitimate revenue. It now taxes A on $50,000 and does not tax B at all, thus getting a revenue from $50,000, when there is really $100,000 of property. In the one case we have double; in the other, we have inadequate taxation.

What is the remedy? Two plans have been tried. According to the first the mortgagor is taxed on the full amount of the property, but the mortgagee is exempt. This method is based on the theory that as a result of the exemption of mortgages capitalists will lend more readily and at a lower rate, and that the benefits of exemption will then be diffused throughout the community. This plan certainly is a great improvement upon the double taxation usually practised; but it might be claimed that a still more satisfactory adjustment of the difficulty can be brought about. As has been elsewhere pointed out, in actual life the complete shifting of the tax from the mortgagee to the mortgagor may be prevented by economic friction.[2] If B, the lender, is taxed on the mortgage, he will indeed try to shift the tax to the borrower; but he may not always wholly succeed. So

[1] *Supra*, pp. 34 *et seq.*

[2] See *The Shifting and Incidence of Taxation* (2d ed.), pp. 266–268.

far as he does succeed, it is good policy to exempt the mortgage, because the owner of the mortgaged estate can then get his loan more cheaply; but so far as he does not succeed, it is unwise to exempt the mortgage. The theory of the property tax cannot permit a man whose wealth consists in mortgages to go scot-free, for his ability remains the same whether his property consists in mortgages or in other income-bearing investments. To the extent that the lender cannot shift the tax, the exemption of mortgages becomes, therefore, illogical and unjust, because the interest rate will not fall by the amount of the tax, and the lender will receive more benefit than the borrower. Thus while the exemption of mortgages is an advance, under certain conditions it would not be a complete solution of the difficulty.

Under such conditions, theory would demand the exemption of the mortgage debt, *i.e.* of the mortgagor on his mortgaged estate. His ability is really reduced by the amount of the mortgage, for the profits of his land go to pay the interest on his debt. To tax thus both lender and borrower is double taxation. The remedy, however, might be declared to consist in exempting not the lender, but the borrower; not the credit of the mortgagee, but the liability of the mortgagor. Tax the lender on the amount of the mortgage and the borrower on the value of the property minus the mortgage.

In order, however, to avoid the practical difficulties often engendered by the exemption of mortgage debts, it is interesting to observe the modifications adopted by several commonwealths, like California and Massachusetts, and also recently introduced in New Zealand.[1] In these states the mortgagor can offset the amount of the mortgage debt. The mortgage, on the other hand, is taxable in the hands of the mortgagee, but it is treated as realty, not as personalty — that is, its *situs* does not follow the domicile of the mortgagee, but it is taxed in the locality where the mortgaged property lies. If the tax is paid by the mortgagor, he may recoup it from the mort-

[1] See *infra*, chap. x., sec. ii.

gagee. In Massachusetts, indeed, this provision is practically void, because nearly all mortgages contain a clause requiring the mortgagor to pay taxes upon the mortgaged estate, and a further agreement to pay all taxes upon the debt in the event of the repeal of the law. The practical result, therefore, is virtually the same as if mortgages were exempt, and the borrower taxed on the total value of his land.[1] In California all such agreements between mortgagor and mortgagee are void. Legal enactments, however, cannot prevent the operation of economic laws. As a matter of fact, the interest rate on mortgages rose as a consequence of the law, and it has even been claimed with some degree of truth that interest has risen by a slight amount over and above the tax, to compensate the lender for trouble and risk.[2] It would seem then that after all there is not much to choose between the two methods — that of complete exemption of mortgages on the one hand, and on the other that of taxing the mortgage as realty, but deducting it from the value of the land. All things considered, therefore, it may be just as wise to adopt the simple expedient of exemption of mortgages, as the more complicated method pursued in Massachusetts and California. But either plan is vastly preferable to the system which taxes the mortgagee on the mortgage, and the mortgagor on the full value of the land.

In the above discussion we have treated primarily of individual indebtedness. The same question often arises in connection with corporate debts, especially in the shape of

[1] See the *Report of the Special Committee of the Boston Executive Business Association on Taxation*, 1889, p. 31. For an investigation of the question as to how far the rate of interest has been affected, see Thomas Hills, *Address on Taxation, delivered before the Boston Executive Business Association*, 1890, p. 20; and Nathan Matthews, Jr., "Double Taxation of Mortgaged Real Estate," in *Quarterly Journal of Economics*, iv., p. 339. The latest discussion of the whole question is found in R. H. Dana, *Double Taxation in Massachusetts. Published under the auspices of the Massachusetts Anti-Double-Taxation League*, 1895, pp. 72-86.

[2] See C. C. Plehn, "The Taxation of Mortgages in California," in *The Yale Review*, viii., pp. 31-67.

mortgage bonds. It has usually been overlooked that there is a decided distinction between individual and corporate property or income. In the case of individuals, to tax both the property and the amount of the mortgage debt is theoretically unsound, because the individual's true taxable property consists in his surplus above indebtedness. The capital stock of a corporation, however, represents, in many cases, only a portion of the property, while the remainder is represented by the bonded indebtedness. In the United States, for example, it is well known that railroads are built mainly on the proceeds of mortgage bonds. To exempt the mortgage debt in the case of these corporations would thus be inequitable; for only by taxing both capital stock and mortgage debt can the state reach the true faculty of the corporation. In the case of individuals, indebtedness diminishes the capacity to pay taxes; in the case of corporations, indebtedness often augments that capacity because it is incurred for the purpose of increasing the value of the property, or rather because it is not so much a real debt as a constituent part of the property.[1] It is the correct recognition of this fact that has led to the introduction of the tax on corporate loans in many states, American and foreign.

We come now to the third case of double taxation, which in the modern days of corporate industry has assumed much importance,—that of the double taxation of a corporation and of the investor in corporate securities. If we tax the corporation, shall we also tax the individual stockholder or bondholder?

The great divergence of practice in America, as well as abroad, will be discussed in another chapter;[2] but the economic theory is simple. If the tax — whether on income or on property — is general, and applies to all classes of cor-

[1] The great defect in the otherwise admirable study of Heckel, mentioned above, is the failure to distinguish between corporations and natural persons. He is indeed forced to the practical conclusion that corporations must be liable for the tax on mortgage debts, but his arguments are weak and inconclusive; *cf.* p. 182 of his work.

[2] *Infra*, chap. viii., sec. v.

porations and to other non-corporate investments as well, it is manifestly double taxation to assess the security holder as well as the corporation. The tax on the corporation diminishes his income from the corporate security; an additional tax on the security would involve double taxation of the same income or property. But if the tax is a special or exclusive tax instead of being a general tax, the matter is different. In that case the general doctrine of capitalization of taxation will apply.[1] If only one class of corporations is taxed, the purchaser of these corporate securities will escape taxation, because the amount of the tax is discounted in the depreciation of the security. For, let us suppose that a corporation previously untaxed has been paying five per cent dividends on its stock quoted at par. If a special tax of ten per cent be imposed on these dividends, the stockholders will get only four and a half per cent. But since by the supposition other classes of corporations, or at all events other non-corporate investments, are not taxed, the price of the stock will fall to ninety. People who can get five per cent on their capital will not ordinarily consent to take four and a half per cent. The original holders of the stock will indeed lose, but the new purchasers will not be affected, because the tax is capitalized and leads to a depreciation of the capital value of the stock. A dividend of four and a half dollars on stock costing ninety is as good as one of five dollars on stock costing a hundred. A tax levied only on corporate profits, or only on some special classes of corporations, does not affect any one except those who become stockholders before the imposition of the tax. To tax the new purchaser on his security would not in such a case involve unjust double taxation.

There is one other condition under which the simultaneous taxation of the corporation and the security holder is not unjust. In the case of a stockholder we have seen that if the tax is general, it is unjust to tax both the corporation and the stockholder. In the case of a bondholder this

[1] See *The Shifting and Incidence of Taxation* (2d ed.), pp. 181–186.

would also ordinarily be true, when the income tax on the corporation is, for instance, deducted from the interest of the bondholder as well as from the dividends of the stockholder. In some cases, however, it happens that the corporation is willing to assume the tax as a whole, and to count the tax among its fixed charges, declaring the coupons free from tax. In such a case it is really the stockholders who pay; for the interest on the bonds is fixed, and what is not deducted from the interest must be paid out of the surplus earnings which would otherwise ultimately go to the stockholders. The bondholders are not reached at all by such a tax, except in the very indirect way that they may be exposed to an ultimate diminution in the security of their lien. But the tax as such does not strike them at all; their property or income in the corporate bonds goes scot-free. An additional tax upon the bondholder would thus really not involve any injustice to them. Here, as well as in the preceding case, a study of the real incidence of the tax becomes important. What is apparently double taxation may turn out not to be such.

We may, therefore, sum up by saying that in so far as the tax is general, it is manifestly unjust to tax both corporation and security holder, but that when the tax is partial or when the corporation assumes the tax as a whole, the additional taxation of stockholder or of bondholder is not necessarily either double taxation or inequitable taxation.

There remains the fourth and final form of double taxation by the same jurisdiction, which has given rise to considerable difficulty. This applies especially to corporations. The question is: Is it permissible to tax the corporation on its property and again on its capital stock?

The answer from the economic standpoint is simple. The exact relations between capital stock and property are discussed more fully below.[1] But for the purposes of this argument it is clear that corporate property is at all events one of the elements that contribute to the value of the capital

[1] *Infra*, chap. viii., sec. iii.

stock. If this be true, to tax the corporation on its property, and then to levy an additional tax on its stock, is *pro tanto* duplicate taxation of an unjust character. If other persons are taxed only once on property, corporations should not be taxed again on what is at all events a part of their property.

This concludes the discussion of the important cases of double taxation arising from the actions of the same tax jurisdiction. Equally important are the cases due to the conflicts of jurisdiction between independent taxing authorities. These we now proceed to take up.

II. *Double Taxation by Competing Authorities.*

The problems included under this head are essentially of modern growth. Until very recently they have received little attention, for three reasons. In the first place, the international relations of commerce and industry were comparatively unimportant; and even within the same state, business methods and business investments were far more localized and less complicated. Secondly, the stranger in primitive society was originally an enemy. The survival of this idea in the conception that the foreigner, as such, is an especially desirable subject of taxation has only slowly given way to the broader conceptions of the modern age. Thirdly and chiefly, in former times but little attention was given to the question of justice in taxation. Even when the general problem was considered, the details of double taxation were regarded as insignificant. But nowadays the question is forging to the front.

It need not be pointed out that amid the complexities of modern industrial life equality of taxation cannot be attained without a careful consideration of these problems. To-day a man may live in one state, may own property in a second and may carry on business in a third. He may die in one place and leave all his property in another. He may spend all his income in one town and may derive that income

from property or business in another town. He may carry on business in several states, or if he has invested in corporate securities, the corporation may be the creature of another state and may be situated or do business in a third. All these cases may affect foreign states or separate commonwealths of the same federal state, or separate cities or counties of the same commonwealth. The possible entanglements are well-nigh innumerable.[1]

The question thus arises: Where shall a man be taxed? Whatever principle we lay down, it is plain that, if every state or every tax authority followed the same principle, it would be easy to avoid double taxation. The complications arise from the fact that one state follows one principle, and that another state follows an opposite or conflicting principle. Let us discuss the different principles that have actually been employed.

The oldest principle is that of citizenship or political allegiance. Originally only the citizen of the state or the burgess of the town had any obligation to the government under which he lived. But it soon happened that commercial relations developed, until in modern times the actual population of any state or community is by no means limited to citizens. To tax only the citizen and to exempt the stranger, whether the stranger be from another state or only from another city, would plainly be inadmissible. Political allegiance in this sense is nowhere to-day made the basis of taxation. Yet when political allegiance involves a positive rather than a negative attitude, it is still followed, at all events in international relations. While the stranger is not exempted, the citizen living

[1] The question has naturally attracted more attention in federal states. We find almost no discussion of the problems in French or English books on finance. It is only lately that the matter has been seriously discussed in the federal states of Germany and Switzerland. See especially Schanz, "Die Ort der Besteuerung," in *Finanzarchiv*, vol. ix. (1892). This was written two years after my discussion of the practical problems in the essay on the Taxation of Corporations, reproduced in this volume. It is gratifying to observe that our conclusions are almost everywhere in accord. For the discussion of the principles, Schanz's essay is very helpful.

abroad is frequently held responsible to his country. Political fealty cannot be so easily abandoned; political rights involve political duties. Among them is certainly the duty to pay taxes.

In modern times, however, the force of political allegiance has been considerably weakened. The political ties of a non-resident to the mother country may often be merely nominal. His life may be spent abroad and his real interests may be indissolubly bound up with his new home, while his loyalty to the old country may have almost completely disappeared. In many cases, indeed, the new home will also become the place of a new political allegiance. But it is well known that in some countries the political bond cannot be dissolved even by permanent emigration; while it frequently happens that the immigrant has no desire to ally himself politically with what is socially and commercially his real home. In the modern age of the international migration of persons as well as of capital, political allegiance no longer forms an adequate test of individual fiscal obligation. It is fast breaking down in practice, and it is clearly insufficient in theory.

The second principle that may be followed is that of mere temporary residence; every one who happens to be in the town or state may be taxable there. This, however, is also inadequate. If a traveller chances to spend a week in a town just when the tax collector comes around, there is no good reason why he should be assessed on his whole property by this particular town; the relations between him and the government are too slight. Moreover, as he goes from place to place, he may be taxable in each place or in none. Temporary residence is plainly inadmissible as a test.

The third principle is that of domicile or permanent residence. This is a far more defensible basis, and it has many arguments in its favor. Those who are permanently resident in a place ought undoubtedly to contribute to its expenses. But the principle is not perfectly satisfactory. For, in the first place, a large part of the property in the

town may be owned by outsiders: if the government were to depend only on the permanent residents, it would lose a portion of its rightful dues. In the second place, most of the revenues of the resident population may be derived from outside sources, as from business conducted in other states. In this case, the home government would be gaining at the expense of its neighbor. Thirdly, property owners like the absentee landlords of Ireland or the absentee stockholders of the railways in the western states of America cannot be declared devoid of all obligation to the place whence their profits are derived. Domicile, therefore, cannot be the exclusive consideration.

The fourth principle is that of the location of the property. This again is undoubtedly legitimate to a certain extent. For a man who owns property has always been considered to have such close relations with the government of the town or county where his property is situated, as to be under a very decided obligation to support it. But for reasons just the reverse of those mentioned in the preceding case, the location of the property clearly cannot be the only test. Permanent residents of means owe some duty to the place where they live, even if their property is situated elsewhere. A New Yorker who has invested even his whole property abroad cannot be said to be entirely without any duty to support the New York or American government.

We see then that each of the last three principles — temporary residence, domicile and location of property — has a certain, but none a complete justification. There is, however, one final principle, toward which all modern governments are tending, which reconciles the three preceding tests. This is the principle of *economic interest* or *economic allegiance*, as against the antiquated doctrine of political allegiance. Every man may be taxed by competing authorities according to his economic interests under each authority. The ideal solution is that the individual's whole faculty should be taxed; but that it should be taxed only once, and that it should be divided among the tax districts according to his

relative interests in each. The individual has certain economic interests in the place in which he happens to live, in the place of his domicile, and in the place or places where his property is situated or from which his income is derived. If he makes money in one place, he spends it in another.

It has been pointed out elsewhere that the conception of faculty in taxation involves two considerations, — those connected with acquisition or production, and those connected with outlay or consumption.[1] In apportioning the total fiscal obligation of the individual it is therefore necessary to ascertain from what place or places his earnings are derived, and then to observe in what place or places they are expended. Only in this way can his real economic interests be located.

From this point of view the solution of the problem would be easy. Let the state or states from which earnings are received divide among themselves the taxes on production, that is, the taxes levied according to property or income or business or any other measure of productive capacity; let the state where the individual lives and where the earnings are spent levy taxes on consumption, whether direct or indirect.

This plan, however, involves one serious difficulty. Expenditure, for obvious reasons, is no longer considered so satisfactory a basis of taxation as revenue. And although taxes on consumption are still largely employed and are defensible for the central authorities, their use for local or commonwealth purposes tends everywhere to be restricted to narrow limits. Where taxes on consumption are abandoned, it becomes necessary to devise some compromise in apportioning the taxes on production. Some writers have suggested that three-quarters of the tax on property or business or earnings should go to the state of domicile, while others have proposed an equal division. It may be conceded that the exact division is necessarily arbitrary; but even an arbitrary division is better than no division at all. Whatever

[1] See my work on *Progressive Taxation in Theory and Practice*, p. 191.

figures we adopt, it is none the less clear that the principle of *economic interest* will help us out of many a difficulty.

In international relations we have scarcely begun to apply the doctrine; in fact, we still cling in part to the principle of political allegiance. The result is much unjust double taxation. In internal relations, as in the federal states of America, Germany and Switzerland, more progress has been made. In the United States, as to a large extent everywhere else, the rule of *situs* has been applied to real estate. This is taxed where it is situated. But in the case of personalty or business most countries waver between the doctrines of *situs* and of domicile. In America, for example, while most of the states tax personal property actually located within their bounds,[1] we find in many places the legal principle, which had its origin in entirely different reasons, that personalty follows the owner — *mobilia personam sequuntur.*[2] Accordingly if the owner is a non-resident, his personal property will be taxed twice — once by the state where it is located, and again by the state of his domicile.

In the United States a few commonwealths have indeed provided by statute for the exemption of a resident's personalty, if permanently located and taxed in another state. Such is now the law in Alabama, California, Connecticut, Indiana, Louisiana, Maine, Missouri, New Jersey, Ohio, Rhode Island, South Carolina, Vermont and West Virginia.[3] The same rule has been extended by judicial interpretation to Illinois, Kansas, Missouri, New York, North Carolina and

[1] That this is permissible is recognized in Coe *vs.* Errol, 116 U. S. 517.

[2] Or, as it is sometimes put, *mobilia inhaerent ossibus domini. Cf.* in general, Story, *Conflict of Laws*, §§ 362, 383, 550. The original use made of this principle in America may be seen in Catlin *vs.* Hall, 21 Vt. 152.

[3] Ala. Code, § 453; Cal. Code, § 3638; Conn. Gen. Stat., secs. 3828–3830 (applies to property actually invested in merchandizing or manufacturing); Ind. Rev. Stat., sec. 6287; La. Act July 9, 1890, No. 106, § 1; Me. Rev. Stat., tit. i., sec. 14, § 10; Mo. Rev. Stat., §§ 7503, 7508, 7531; N. J. Rev. Stat. [1877], p. 1151; O. Rev. Stat. (1892), § 2735; R. I. Pub. Stat., chap. 42, sec. 9 (applies only to machinery, machine tools, stock in trade, merchandise, lumber, coal and stock in livery stables); S. C. Rev. Stat., chap. 12, sec. 1; Vt. Rev. Laws, sec. 270; W. Va. Code, chap. 29, sec. 48.

Ohio.[1] In other commonwealths the rule is applied only in part. Thus in Arkansas, South Carolina and Virginia a similar exemption is made for all personalty except in so far as money, credits or investments in business are concerned.[2] In Delaware only so much of the personalty is exempt as consists of non-productive securities of other commonwealths.[3] Finally, in Michigan all the personalty of a resident is taxable except that which is invested in another commonwealth.[4] But in most of the commonwealths the legal fiction still prevails, and the individual is taxed on all his personalty irrespective of its location. The obvious result is double taxation of a nature which cannot possibly be justified.

According to the doctrine of economic interest, the solution is plain. A large part of the tax should go to the place where the property lies or whence the earnings are derived; a smaller share to the domicile of the owner. But this presupposes uniform action on the part of the conflicting authorities. As long as no interstate or intercommunal agreements are made, the simplest plan would be for the state of location to tax the tangible property, and the state of residence to tax the intangible property or income therefrom.

[1] Mills *vs.* Thornton, 26 Ill. 300 (1861); Fisher *vs.* Commissioners of Rush County, 19 Kan. 414; State *vs.* St. Louis County, 47 Mo. 594 (1871); State *ex rel.* Dunnica *vs.* County Court, 69 Mo. 454 (1879); Valle *vs.* Ziegler, 84 Mo. 214 (1882); People *ex rel.* Hoyt *vs.* Commissioners, 23 N. Y. 224 (1861), which decided that shares of foreign corporations are exempt from local taxation in New York because they have no *situs* in the state; People *ex rel.* Trowbridge *vs.* Commissioners, 4 Hun. 595 (1875); 2 Jones Eq. Rep. 53, where the principle *mobilia personam sequuntur* is declared to be "a fiction which has no application to questions of revenue"; Carrier *vs.* Gordon, 21 Ohio 605 (1853). *Cf.* for the practice and cases up to 1871, (First) *Report of the (New York) Commissioners to revise the Laws for the Assessment and Collection of Taxes* (1871), pp. 130–147; and for a more systematic discussion of the later cases, Walker, *Double Taxation in the United States*, chap. vi.

[2] Ark., Mansfield's Digest, sec. 5048; S. C. Gen. Stat., chap. 11, sec. 149; Va. Code, sec. 492.

[3] Del. Laws 1879, chap. 2.

[4] Mich. Laws 1885, no. 153, sec. 2.

This conclusion, however, is complicated by several considerations. In the first place, the intangible property may consist of corporate securities, while the corporation may already be taxed in the state where it is situated; secondly, the intangible property may consist of a mortgage on real estate abroad, which in that state is treated as realty and already taxed; and finally, the American experience with the taxation of intangible personalty in general is very sad. For practical purposes, therefore, the conclusion would be: Tax only realty and tangible personalty, and tax this in the state of location. When the era of interstate agreements is finally reached, it will be feasible to attempt the more ideal plan of taxing the entire property or income, dividing the proceeds among the states of location and domicile according to a pre-established proportion, and in harmony with the doctrine of economic interest. In the interval it may be possible to reach intangible personalty through some form of national taxation, the general government then to apportion the proceeds to the states. But under the recent income tax decision it is doubtful whether this can be done in the United States without an amendment to the constitution.

It will be well now to take up in turn the most important cases of double taxation by different jurisdictions. As the problems apply to interstate or inter-municipal complications as well as to difficulties between foreign countries, the word *alien* must be understood to include persons from another town or commonwealth as well as from a foreign country. And since the questions are precisely the same when applied to corporate business as when applied to individuals or individual business, the term *citizen* must be understood to mean legal as well as natural persons. Let us proceed to discuss the cases in order.

1. *Shall a resident citizen be taxed on his property abroad or on his income from abroad?*

In international relations the principle of political alle-

giance is still largely followed. Thus in England, and many other countries, as formerly and again more recently in the United States, a resident citizen is subject to the income tax on his entire income, whether received abroad or not. If, as is usually the case, the income is again taxed where it is earned, we have a glaring case of double taxation. It is only in the inheritance tax that the principle of citizenship has begun to be weakened, and that the doctrine of location is applied to a small extent.

In state and local taxation the principle of economic interest has made more headway. In the United States, as well as in several of the German commonwealths and Swiss cantons, the rule of *situs* is generally applied to real estate and to tangible personalty and business; the rule of domicile to other forms of property or revenue. In Germany the taxes on business, salaries and pensions, as well as on land, must be assessed according to location. But all these rules are only an approximation to the ideally correct principle.

In the case of business — whether individual or corporate — America is as yet in the rear of some of the European states. In purely local taxation the American commonwealths generally levy the whole tax at the place of the principal office, although most of the business profits may be earned in other places within the state. In the case of corporation taxes, however, a few states now pursue the more sensible policy of taxing the domestic corporation on that part of its capital or earnings only which is employed or received within the state. This is perhaps as near as we can get at the present time to any practicable solution.

2. *Shall a non-resident citizen be taxed on his property abroad or on his income from abroad?*

This seems to involve a great stretching of the principle of political allegiance; yet we find it to be the practice at the present day in international relations. For instance, in the national income tax of 1894 in the United States, an American was taxed on his whole income, whether he resided in America or abroad. Some states, however, like England and

Austria, do not carry the doctrine of citizenship to this point, — they make no attempt to tax a non-resident citizen on his foreign income. Other countries cling only nominally to the principle, by providing for a remission of taxes in case the citizen is actually taxed abroad. And still others, like Russia, compromise the matter by exempting the citizen after he has lived abroad two years.

In state and local taxation, the tendency is far more evident to settle the matter according to the doctrine of economic interests. According to this principle, there is no imaginable reason why a non-resident citizen should be taxed for his property abroad. Moreover, neither the principle of location nor that of domicile has any application. Even if it were desirable to levy such a tax, it is difficult to see how the obligation could be enforced, unless the non-resident happened also to own some real estate at home. And even then, the home property would scarcely be liable for the taxes of the non-resident on his foreign income.

3. *Shall a non-resident citizen be taxed on his property at home or on his income earned at home?*

Here, again, the ideal solution would be, as in the first case, that the home government should levy not the entire tax, but only the greater part, leaving a small share to the foreign government. But in default of such an arrangement, the most practicable method is for the home government to levy the whole tax, and to trust to the foreign government to avoid double taxation.

As a matter of fact, this is the practice in international relations. Almost everywhere the income earned at home is taxable even though the citizen lives abroad; for in this case the principles of citizenship (or political allegiance) and of location come together. In state and local taxation, however, the practice is considerably modified by the principle of domicile, as applied to certain forms of personalty or income. We have seen the practice in America in regard to property; and in the few cases of income taxation, the custom is still further restricted. In Massachusetts and

Virginia, for instance, the income tax applies only to residents.

4. *Shall a resident alien be taxed on his property or income in the state of residence?*

This, together with the two following cases, is the reverse of the preceding cases. It is indeed evident that the alien should not be treated with greater favor than the citizen. Accordingly, if the non-resident citizen be taxed, the resident alien should certainly not be exempt in so far as the same property is concerned. In international relations most states have here abandoned the doctrine of political allegiance. There is no reason why it should not be abandoned, for the principles of domicile and of location here come together, and, combined, far outweigh that of citizenship. In state and local taxation the matter is somewhat complicated by a survival of the old jealousy of strangers. Not only is the resident alien taxed, but he is sometimes taxed at a higher rate than the citizen, or is taxed when the citizen is exempt. We find this, for instance, in the United States where a higher rate is imposed on certain foreign companies (*i.e.* resident aliens). A way out of the difficulty has been outlined in the so-called reciprocal laws, according to which a state taxes resident aliens in the same way that its citizens resident in the foreign state are there taxed.[1] The wholesome dread of reprisals is often sufficient to prevent unjust double taxation.

5. *Shall a resident alien be taxed on his property abroad or on his income earned abroad?*

This case is not quite so simple. We have seen that if we abandon the principle of political allegiance and substitute that of economic interest, a large part of the tax should be paid to the country where the property is situated, and only a small part to the country of domicile. But where this ideal cannot be attained, we found it simpler to apply, as far as possible, the doctrine of location.

In international relations it is to be noticed that almost all

[1] See *infra*, chap. vi., sec. ii., § 2.

states have abandoned the doctrine of political allegiance and have substituted that of domicile. That is, in England and in most of the German states residents are liable to the income tax on their whole income, whether they are aliens or citizens, and whether the income is derived from the home country or from abroad. This was also the case in the recent income tax in the United States. To put it in another way: when the principle of citizenship is advantageous to a state, it is applied; when it is disadvantageous, it is not applied. Only a few countries exempt the foreign property or income of a resident alien. If the foreign state applies the principle of citizenship and the home state the principle of domicile, as is frequently the case, it is not to be wondered at that there should be so much double taxation.

In state and local relations the doctrine of economic interests has made considerably more headway. Little attention is paid to the question whether the resident is a citizen or a foreigner, or whether we are dealing with a foreign or a domestic business or corporation. The problem is solved very much as in the case of the resident citizen.

6. *Shall a non-resident alien be taxed on his property or income in the state?*

In international relations, here again, the principle of political allegiance has been abandoned, and that of location has been substituted. It is the almost universal custom for states to levy a tax on incomes arising within their borders, irrespective of the question whether the recipient lives abroad or is a foreigner. The recent income tax in the United States formed no exception. The difficulty arises in the practical enforcement of the law, where the property or the source of income does not consist of tangible property.

In state and local taxation the problem is comparatively simple as regards tangible property, which is taxed where is located. But in the case of intangible property, not pable of a *situs*, the question arises whether it should llow the domicile of the owner, and to that extent be yond the jurisdiction of the taxing power; or whether

the intangible property may not be declared to have at least an economic *situs* in connection with the tangible property on which it is based or which it represents. In so far as corporate securities are concerned, this question will be treated in a subsequent chapter. In the case of earnings from business, since there must generally be an office or an agent in the state through which the earnings are received, the alien (or foreign business or corporation) is to that extent no longer a non-resident. But even here the principle of economic interest is clearly applicable.

From the above review, it is evident that the question where a tax ought to be imposed involves a rather simple theoretical problem and many very difficult practical problems. It is the same with almost every question of taxation. As a matter of principle, it is easy to decide that a man should be taxed according to his faculty; as a matter of practice, it is not so easy to apply the principle of faculty in the actual tax system. So we have found that in the case of double taxation due to conflicts of jurisdiction the ideal principle is that of economic interest or economic allegiance, modified in a few cases by that of political allegiance. The difficulty arises when we attempt to embody this principle in equitable assessments.

If we observe the legislation of the most progressive countries, we find, especially as regards internal or federal relations, a distinct tendency toward the realization of this principle. Economic interests are divided between the places of location, of domicile and of residence. However differently various states may measure the relative importance of each, there is a steady progress toward the recognition of the principle. In the case of real estate the solution is obvious; in the cases of intangible personalty, of business earnings and of interest from loans the problems are far more complicated. To work out the solution[1] for each kind

[1] For a study of the practical problem as applied to the corporation tax, see *infra*, chapter viii., sec. iv. *Cf.* in general the monograph of Walker.

of tax would take us too far afield. But it cannot be too strongly emphasized that in federal states no satisfactory system of taxation can be attained until two conditions are realized. We need, in the first place, a substantial interstate agreement to pursue the same general policy in cases of conflicting jurisdiction; and we need, in the second place, a virtual acceptance of the doctrine of economic interests in taxation. When once these conditions exist, it will make comparatively little difference how the principle is interpreted. For if it is everywhere interpreted in the same spirit, there can be little double taxation; and with increased experience we may expect to find closer and closer approximation to strict justice in the application of the principle. In international relations we are still very far removed from the ideal; in internal taxation — federal, state and local — the drift is unmistakably in the right direction.

CHAPTER V.

THE INHERITANCE TAX.

THE inheritance tax,[1] as now understood in most countries, is essentially the product of modern democracy. It was, indeed, not unknown to antiquity. In Rome the *vicesima hereditatium*, a tax of a twentieth part of inheritances, was imposed at the beginning of the empire to pay the pensions of the veteran soldiers. In the middle ages the relief and the *heriot* were exacted by the overlord in return for the privilege of succeeding to the possession of property. But while the influence of the mediæval idea is still to be seen in a few of the continental countries where the payment is regarded as made for the privilege of succession, the tax is almost everywhere of independent and comparatively recent origin. In Holland, in France and even in England, parts of the existing inheritance taxes are survivals of the system of charges on transfers and transactions. In many English-speaking states the term *probate duties* is still employed, signifying that the original conception was a charge for the privilege of having the will probated; and in some places the various forms of the inheritance tax are

[1] The term *inheritance tax* is here used in its popular sense, as a tax on the devolution of property, whether real or personal, whether by will or by intestacy. By all means the ablest, as it is the only complete, discussion of this topic from the points of view of economics, law and history (American as well as European), is to be found in the doctor's dissertation by one of my former students. See *The Inheritance Tax*, by Max West, sometime University Fellow in Finance, in Columbia University Studies in History, Economics and Public Law, vol. iv., no. 2, 1893. Less complete are: von Scheel, *Erbschaftssteuern und Erbschaftsreform;* Eschenbach, *Erbrechtsreform und Erbschaftssteuer;* Krüger, *Die Erbschaftssteuer;* Bacher, *Die deutschen Erbschafts- und Schenkungssteuern.*

included among the stamp taxes, or taxes on transactions. But in most countries the older idea has been abandoned, and has been supplanted by the view that the tax must be regarded rather as a charge on the recipient of the inheritance than on the transaction itself. The inheritance tax is to-day found primarily in democracies like those of England, Switzerland, Australia and America; and in other countries its development has gone hand in hand with the spread of democratic ideas.

It may be asked why democracy should favor the inheritance tax? The answer depends upon the point of view from which we regard democratic tendencies. If we say, as some believe, that the trend of democracy is necessarily toward socialism, the answer is plain: the inheritance tax is imposed because democracy is jealous of large fortunes. But if, on the other hand, we hold with the less pessimistic critics that modern democracies are endeavoring simply to do away with the abuses that have come down to us from the aristocracies of the past, we may claim that the inheritance tax is only a means of securing equality in taxation and of realizing the principle of ability to pay. Because the tax has frequently been urged by those who are opposed to large fortunes, it has usually been overlooked that it may be defended on purely economic grounds as in complete harmony with the general principles of equitable taxation.

The earliest argument [1] for the inheritance tax had its origin in the plan to abolish intestate inheritance; that is, to provide, when there was no will, for the devolution of the property to the state. This scheme was propounded in the celebrated essay of Bentham, entitled "Supply without Burden." [2]

[1] The fullest account of the arguments is to be found in the article by Dr. Max West, "The Theory of the Inheritance Tax," *Political Science Quarterly*, viii., p. 426 (1893).

[2] The full title is "Supply without Burden, or Escheat *vice* Taxation, being a proposal for a saving of taxes by an extension of the Law of Escheat, including strictures on Collateral Succession comprised in the Budget of 7th December, 1795." In *Collected Works*, Bowring's edition, ii., p. 585.

The title of the essay is explained in the following problem: "What is that mode of supply of which the twentieth part is a tax, and that a heavy one, while the whole would be no tax, and would not be felt by anybody?"

The solution of the problem, according to Bentham, lay in the abolition of intestate succession except in the case of immediate relatives. To this he added the limitation of the power of bequest of testators without direct heirs. The old principle of escheat was to be extended to include the inheritances or bequests then going to collateral relatives. But Bentham claimed, further, that the state should have an equal share in the sums going with or without a will to such close relatives as grandparents, uncles and aunts, and perhaps nephews and nieces, as well as a reversionary interest in the succession of childless direct heirs without prospect of children.[1]

Bentham held that this was not a tax, and that precisely in this fact lay its chief advantage, — that of "unburthensomeness," or, as we would say, freedom from oppressiveness. According to the general principles of human nature, said he, a man is led in the case of a tax on successions to look upon the whole of what is left to him as his own, of which he is then called upon to give up a part. But if under the law regulating successions he knows that nothing, or only a small share, is due him, Bentham claimed that he would suffer no hardship. "For hardship depends on disappointment; disappointment upon expectation, and if the law of succession leaves him nothing, he will not expect anything."[2]

[1] The plan is defined to be "the appropriating to the use of the public all vacant successions, property of every denomination included, on the failure of near relations, will or no will, subject only to the power of bequest, in respect of the half of whatever property would be at present subject to that power."

[2] As he puts it in another place: "The riddle begins to solve itself: a part taken and a sense of burthen left; the whole taken and no such effect produced; the effect of a part, greater than the effect of a whole; the old Greek paradox verified, the part greater than the whole. Suffer a mass of property in which a man has an interest to get into his hands, his expectation, his imagination, his attention at least fastens upon the whole.

Exaggerated as Bentham's distinction undoubtedly is, it contains a kernel of truth; namely, that there is no such thing as a natural right of inheritance, and that the extension of intestate succession to collateral relatives is under existing social conditions defensible only to a very limited extent. Whatever may have been the original family theory of property, it may be argued with some force that the bonds of the wider patriarchal family life have been considerably loosened in modern times, and that the family consciousness extends nowadays only to the nearest relatives.

While Bentham looked upon the matter primarily from the point of view of escheat, it was but a step to extend the argument, and to say, as many writers now do, that, since it is exceedingly difficult to draw a sharp line where the family consciousness ends, it is more just and more practicable for the state to take away a small part from direct relatives and an increasingly larger sum from the more remote relatives. The tax, in other words, would be graduated according to the degree of relationship. What was originally nothing but an extension of escheat, thus grew into the idea of a graduated collateral inheritance tax. Even Bentham himself, although protesting against the use of the word *tax*, virtually advocated a graduated tax when, as we have seen, he proposed the exemption of direct heirs; the confiscation of fifty per cent from grandparents, uncles and aunts; and the seizure of the whole in case of intestacy. Thus the extension-of-escheat argument, which was meant originally to apply only to intestacy, has been made to include also a limitation of the power of bequest.

A supposed variation of this line of reasoning is seen in what is called the theory of state co-heirship. It originated with Bluntschli, who used the expression *staatliches Miterb-*

Take from him afterward a part . . . the parting with it cannot but excite something of the sensation of a loss. . . . Take from him now (I should not say *take*), but keep from him the whole, so keeping it from him that there shall never have been a time when he expected to receive it; all hardship, all suffering, is out of the case."

recht, and has found its way into some recent treatises. Sometimes Bentham is cited as the originator of the doctrine, but this is a mistake. As Dr. West so well puts it: —

> Bentham's plan was to abolish intestate inheritance except between immediate relatives, to restrict the power of bequest of testators having no direct heirs, and to give the state a part of the property of decedents in certain cases. He called the system which he proposed an extension of escheat, and based it not upon any right of inheritance in the state, but upon the absence of any reason for the operation of intestate inheritance between individuals not closely related. It is therefore a mistake to call Bentham a representative of the theory of state co-heirship. But later writers have combined with his argument the thought that the state should inherit property from individuals because of what it does for them during their lives. The state is sometimes represented as a larger family; according to Umpfenbach, the bond of kinship between distant relatives loses itself in the whole nation, which therefore inherits the property of individuals as the family inherits the property of its members. Such expressions as these, however, must be regarded as metaphorical rather than scientific. The state may acquire property by escheat, but not by inheritance. Inheritance implies kinship, and the modern state is not a genetic association. The representation of the state as co-heir is either a mere figure of speech (and as such it is as old as Pliny), or else it results from a confusion of inheritance and escheat. Inheritance is not a matter of public law; it is for private law to prescribe how far inheritance shall be permitted between individuals, and for public law to ordain that where inheritance ends escheat shall begin.[1]

We now come to the second theory, which may be called the socialistic or diffusion-of-wealth theory. It is based upon the doctrine that it is the function of government to use the power of taxation as an engine of social reparation in checking the growth of large fortunes and in bringing about a more equal distribution of wealth.

In its origin this theory was not socialistic. John Stuart Mill accepted Bentham's reasoning, but developed it. Since

[1] *Political Science Quarterly*, viii., p. 436.

he did not consider the right of inheritance as necessarily involved in the private ownership of property, he desired to extend the abolition of intestate succession to direct heirs, as well as to collateral relatives. Moreover, even in the case of a will, no one, he thought, was justified in demanding more than a fair competence. His plan was as follows: —

> Freedom of bequest as the general rule, but limited by two things; first, that if there are descendants, who, being unable to provide for themselves, would become burthensome to the state, the equivalent of whatever the state would accord to them should be reserved from the property for their benefit: and secondly, that no one person should be permitted to acquire by inheritance more than the amount of a moderate independence. In case of intestacy, the whole property to escheat to the state: which should be bound to make a just and reasonable provision for descendants, that is, such a provision as the parent or ancestor ought to have made, their circumstances, capacities, and mode of bringing up being considered.[1]

This argument is not necessarily socialistic; but it is perhaps open to question on other grounds. It may be regarded as opposed to the family theory of property, which even in its narrower sense, assumes that as a man acquires property largely in order to leave it to his children, for whom he ought to provide, there is reasonable ground for demanding the perpetuity of the means of family support. Denial of the right of inheritance by direct heirs thus seems to involve an attack upon the unity of the family. On the other hand, the right of inheritance within the family has already been largely modified by the freedom of bequest; and if a man is at liberty to give away his whole fortune to outsiders, we cannot well speak of a family right. In parts of continental Europe, indeed, we have the survival of the old idea in the institution of compulsory children's share (*portion légitime, Pflichttheilsrecht*). Even in the United States some of the commonwealth laws prohibit the bequeathing of more than a certain portion

[1] *Political Economy*, book v., chap. ix., sec. i. *Cf.* book ii., chap. ii., secs. iii, iv.

of the estate to charitable or public uses when there is a child, a widow or a parent. But, as a general rule, in English-speaking countries the right of bequest is free. It is well known that inheritance is older than bequest, and that the latter system was introduced into the Roman law, not to limit inheritance, but to provide heirs in default of near relatives. The modern right of free bequest is, therefore, really opposed to the older family idea of property, which takes shape in the assertion of the right of inheritance. It thus becomes a very difficult question to decide how far inheritance may be demanded, as of right. Nevertheless, it may be said that most thinkers, as well as the mass of the public, would still to-day maintain the custom of inheritance, not indeed as a natural right or as a necessary consequence of the right of private property, but simply as an institution that is on the whole socially desirable. Even Mill says of his own scheme: "The laws of inheritance have probably several phases of improvement to go through, before ideas so far removed from present modes of thinking will be taken into serious consideration."

While there is some scientific justification for the doctrine as originally expounded, it is unquestionable that most of its defenders plant themselves squarely on the ground that it is the function of the state to check the aggregation of wealth into a few hands, and to provide for the equalization of fortunes. These writers would put a limit not only to the amount of wealth acquired through inheritance or bequest, but to the amount acquired in any manner. No fortunes should exceed a definite sum. Such a doctrine is very distinctly socialistic. Those who are not prepared to accept socialistic premises and socialistic methods of reasoning cannot acknowledge the validity of the diffusion-of-wealth argument.

While the premises thus may be regarded as wrong, the conclusion may be right, for the same conclusion may conceivably be drawn from utterly dissimilar premises. Just as it has been elsewhere shown that progressive taxation may be upheld by decided opponents of socialism,[1] so it can be shown

[1] See my work on *Progressive Taxation in Theory and Practice*, pp. 72, 78, 83.

beyond dispute that the inheritance tax may be supported through entirely different arguments by those who oppose the doctrine of the diffusion of wealth. Brushing aside, therefore, the socialistic doctrine as inadequate and unsound, let us examine these other arguments.

The so-called cost-of-service theory, which is occasionally found, treats the inheritance tax simply as a fee. The probate courts are a source of expense to the government and a source of special benefit to those that utilize their services. What is more reasonable, then, than that those who receive the special benefit should defray the cost?

This argument, however, would justify only very light charges, and it would result not so much in an inheritance tax as in a system of probate fees. Such probate fees are occasionally found;[1] but as soon as they exceed the cost, the theory is no longer applicable. The probate duty in England, for instance, soon outgrew its original character of a fee. Another objection to this theory is that logically the charge ought to be regressive, not proportional or progressive; that is, since it costs proportionally less, to probate a large sum than a small sum, the rate ought to be lower on a large inheritance than on a small one — or, at all events, it ought not to grow with the size of the inheritance. As a matter of fact, the inheritance tax of 1889 in Wisconsin was regressive.[2]

A somewhat more substantial theory is that which considers the inheritance tax as the price of a special privilege. It is regarded not so much as a fee paid to defray the cost of government services as a charge proportioned to the advantages that accrue to the recipient of the inheritance. From the legal point of view, this has much to recommend it. In the United States, for instance, if regarded as a tax on

[1] So in the American commonwealths, as Wisconsin, Minnesota, Illinois and New Hampshire.

[2] Estates not exceeding $3000 were exempt; up to $500,000 they paid one-half of one per cent; on the excess above this, one-tenth of one per cent. The charge was declared to be "in lieu of fees," but it was held to be a tax, and therefore unconstitutional because applicable only to one county. 76 Wis. 469. See West, *op. cit.*, p. 77.

property, the charge would conflict with the constitutional provision found in many commonwealths, requiring all property to be taxed equally. If a general property tax were levied, and then an additional inheritance tax were imposed, we should have technically unequal taxation of some property. Again, the tax, if imposed by the federal government, would militate against that section of the constitution which requires all direct taxes to be apportioned according to population. Accordingly, many of the American states have contrived to uphold the constitutionality of the tax only by declaring it to be a tax on the devolution of property. It is a tax not on wealth, but on the transfer of wealth. So the Louisiana inheritance tax was originally upheld by the federal Supreme Court as a simple regulation of inheritance.[1] But since the federal government possesses no constitutional power to regulate inheritances, the federal inheritance tax was sustained as being neither such a regulation nor a direct tax on the land, but an excise on the right to succeed to the ownership of property.[2]

From the economic point of view, there is only a slight justification for this contention. It is true that in some countries the inheritance tax is still regarded as an indirect tax on transactions or transfers. So regarded, it should be our aim to abolish, rather than to develop, the tax, in conformity with the general tendency of modern reform to restrict the scope of taxes on acts and transactions to their narrowest limits. To regard the tax as a charge on the mere privilege of succession, measured according to the special benefits accruing to the successor, is to revert to the protection or insurance theory of taxation, which has been discarded in modern fiscal science. To regard it simply as an indirect tax on transfers is to stamp it with the disapproval of the democratic movement which seeks to minimize taxes on communication and exchange.

There remains only the theory which regards the inheritance tax as a direct tax on the recipient of the inheritance. If we grant that the basis of taxation is the faculty of

[1] Mager *vs.* Grima, 8 How. 490. [2] Scholey *vs.* Rew, 23 Wall. 331.

the individual, it is evident that any addition by inheritance to the wealth of the individual increases his ability to pay. If we grant, further, that the best test of faculty is the revenue of the individual, it is clear that this accretion to his revenue is of a peculiar character. Income, as the term is commonly employed, denotes a regular periodic return; but an inheritance is an irregular, a spasmodic, a chance return. In a logical income tax there is no room for such accidental or fortuitous revenues. Yet they clearly add to the ability of the individual, just as the chance gains from speculation undoubtedly increase the faculty of the taxpayer. From this point of view, the inheritance tax may best be defended by the accidental or fortuitous-income argument.

It may be claimed that there are possible cases where this argument is inapplicable. Thus, after a man's death, his widow or children may have to depend entirely on the income from his property, where before his death they enjoyed not only this sum but also the additional income due to his personal exertions. The family ability to pay may be diminished, not increased. It may be answered that the state deals with individuals, not with families, and that the individual members now have incomes where before they had none. And even if we concede this claim, the difficulty can be met by exempting a certain amount, and imposing a progressive tax on the remainder. For in proportion as the family income was derived from property, rather than from the labor of the head of family, the share due to his influence becomes correspondingly smaller, and the loss due to his absence will be less keenly felt; while, on the other hand, the family expenses themselves are diminished by his death. Finally, in proportion as the inheritance goes to self-supporting direct heirs or to collateral relatives, it may be maintained with truth that there is a decided increase in tax-paying ability.

When, therefore, we have a system of income taxes, the inheritance tax may be regarded as a supplementary tax to reach the real ability of the individual. Moreover, it may be regarded as a convenient method of applying the principle

of differentiation in the taxation of income. It is now commonly recognized that incomes from property should pay a higher rate than incomes from labor. Instead of making a difference in the rates to reach this end, the proportional income tax may be supplemented by a property tax; or where this is for any reason undesirable, by the inheritance tax. The latter would then serve the double purpose of reaching not only accidental incomes, but also property incomes, since all inheritances take the shape of property.

Even in those states where the chief direct tax is that on general property, the inheritance tax may be defended on the accidental-income theory For in so far as property is at all an adequate test of faculty in taxation, it is simply a mode of estimating the regular revenue or income. Accidental income is as little taken note of in a property tax as in an income tax. In fact, as between the two systems, an inheritance tax is more necessary to supplement the former tax than the latter.

An additional theory which has been advanced more recently is the so-called back-tax theory. Since general property taxes are to a large extent evaded during life, it is said to be no more than just that the property should be made to pay when the tax cannot be evaded. But in this case it is the property of the decedent, rather than the ability of the heir, that is considered. Moreover, the validity of the argument is questionable chiefly because it is well-nigh impossible to prove the relation between the amount of the inheritance tax and the aggregate of taxes evaded during life. In the United States, for example, taxes on realty are generally paid; it is the tax on personalty that is evaded. The inheritance tax ought then to take the shape only of a tax on the successions to personal property. As an actual fact, this is the case in New York in the direct inheritance tax, and was true of the federal income tax of 1894. The reasoning, therefore, does not apply to real estate at all. Finally, in proportion as other taxes are substituted for the personal property taxes, the argument falls away. Where there is a property tax or an income tax, there may well be some provision for an inventory of

the estate after death (as in Switzerland and Germany), with severe penalties for the evasion of back taxes. But such a provision is entirely independent of the inheritance tax.

The theory sometimes advanced[1] that the inheritance tax is to be regarded as a capitalized income tax paid once and for all at the close of life, instead of in small amounts during each year, is not so strong. In the first place, the existing tax system either does, or does not, reach the income or property of the living taxpayer. If it does, as it ought to do, to capitalize what has already been paid involves double taxation. If it does not, the tax is still objectionable on the score of inequality, because when two people with the same fortune die at different ages and pay the same tax, the amount, if regarded as a capitalized income tax, would mean a very divergent rate of income tax. If the tax payable by A, who has enjoyed his income forty years, is equivalent to the capitalization of a five per cent income tax, the amount payable by B, who has enjoyed his income only ten years, would be tantamount to a twenty per cent income tax. An inheritance tax, from this point of view, would be grossly unjust. This objection, due to the varying frequency of the transfer, was first made by Adam Smith, but is applicable only when the tax is considered as a property or capitalized income tax. According to either the price-of-devolution argument or the accidental-income argument, the frequency of transfer is immaterial; for the tax is paid each time by a different person, — and it is the person, not the property as a whole, that is responsible.[2] Finally, under the capitalized-income theory no graduation according to relationship would be possible. In short, the whole theory seems defective.

The logical defence for the inheritance tax is thus the accidental-income argument. It is in harmony with the

[1] Bastable, *Public Finance*, p. 526.

[2] Some states, however, provide for this supposed inequality by exempting the second devolution, if it takes place within a certain number of years. Chili fixes the term at ten years. See West, *op. cit.*, p. 33.

general basis of taxation — the faculty or ability of the individual to pay; it rounds out the existing system, whether based on property or on income; and it is not open to the objections which may be urged in one form or another against each of the other theories.

Granting the desirability of the tax, we are at once confronted by the problem of graduated or progressive taxation. Graduation of the tax according to relationship has met with well-nigh universal acceptance; graduation of the tax according to amount has given rise to more controversy. This question has been fully discussed in another place[1] with the conclusion that the theory of progression is more applicable to the inheritance tax than to any other part of the fiscal system; and that, whether we base our demand on the limitation-of-inheritance theory, the faculty theory, or the compensatory theory, some scale of progression is both desirable and practicable.

The inheritance tax to-day scarcely needs defence. It is found in almost every country; and the more democratic the country, the more developed is the tax. In some of the Canadian provinces, in the Australian colonies, in the Swiss cantons, in England itself, the rates are not only progressive, but highly progressive. The recent reforms in England are fully described in another chapter.[2] In the United States also, there is now a decided movement toward the progressive inheritance tax. The collateral inheritance tax is now (1900) found in twenty-one commonwealths.[3]

[1] *Cf.* the author's work on *Progressive Taxation*, pp. 213, 215.

[2] *Infra*, chap. x.

[3] The date when first imposed is put in brackets: California [1893], Connecticut [1889], Delaware [1869], Illinois [1887, only for Cook County; 1895, for the state], Iowa [1896], Maine [1893], Maryland [1845], Massachusetts [1891], Michigan [1899], Minnesota [1897], Missouri [1899], Montana [1897], New Jersey [1892], New York [1885], Ohio [1893], Pennsylvania [1826], Tennessee [1891], Vermont [1896], Virginia [1844 to 1884, again in 1896], West Virginia [1887], and Wisconsin [1899]. The tax was declared unconstitutional in the following states in the years mentioned in brackets: Louisiana [1899], Michigan [1894], Minnesota [1875], Missouri [1898], New Hampshire [1878], and Wisconsin [1890]; but in four of these six cases the

The direct inheritance tax exists in seven commonwealths,[1] the rates being one per cent in every case except that of Connecticut, where it is one-half of one per cent. In four of these seven commonwealths $10,000 is exempted, while in Michigan the exemption is fixed at $5,000, in Montana $7,500, and in Illinois at $20,000. The direct tax applies exclusively to personal property in every case except Connecticut and Illinois, where it affects all property. But it will be remembered that in Connecticut the rate is low, and that in Illinois the exemption is high. The only case in which the progressive principle has been applied to the direct tax is that of Ohio, where the law of 1894 was declared unconstitutional for that reason in the following year. On the other hand the progressive principle has been applied to the collateral tax in two cases — Missouri and Illinois. The Missouri law of 1895 was overthrown in the following year, but the more important and more radical law of Illinois of the same year was upheld not only by the state court but also by the federal court, in what has become a leading case.[2] Under this decision, the principle of progression is applicable to the direct taxes as well. Partly as a

constitutional objections were obviated by later laws which, as indicated above, now exist in Michigan, Minnesota, Missouri and Wisconsin. The tax at one time existed, but was abolished, in Alabama [1848 to 1868], Louisiana [1828 to 1877, again in 1894 for foreign heirs, but pronounced unconstitutional in 1899], North Carolina [1847 to 1884], Virginia [1848 to 1884, but re-enacted in 1896].

[1] The date when first imposed is put in brackets: Connecticut [1897], Illinois [1895], Michigan [1899], Minnesota [1897], Montana [1897], New York [1891], and Wisconsin [1899]. The direct tax was declared unconstitutional in the following cases, partly for special reasons, partly because of the exemptions or progressive features: Ohio [law of 1894 in 1895], Michigan [law of 1893 in 1894], Pennsylvania [law of 1897 in 1899].

[2] Kochesperger *vs.* Drake, 167 Ill. 122; Magoun *vs.* Trust and Savings Bank, 170 U. S. 283.

The rates of the Illinois tax are as follows: For direct heirs, one per cent on the excess above $20,000; for uncles, aunts, nephews, nieces, and their descendants, two per cent on the excess above $20,000; in all other cases, the exemption is $500 and the rates are: from $500 to $10,000, three per cent; $10,000 to $20,000, four per cent; $20,000 to $50,000, five per cent; over $50,000, six per cent.

consequence of this decision a number of progressive inheritance tax bills have recently been introduced in several commonwealths, while the principle itself has been applied both to the direct and to the collateral inheritance taxes unfortunately levied by the federal government since 1898.[1] I say unfortunately, because the entrance of the federal government into a field so well occupied by the separate states will tend seriously to complicate the problem of tax reform within the commonwealths themselves.

A comparison of the recent fiscal development in democratic states would not be uninstructive. In only three countries does the old general property tax still survive — in Switzerland, in Australia and in the United States; and in all three the system has become so defective that it has been supplemented by other sources. The Swiss cantons first developed the income tax, then the inheritance tax, and have only recently been paying attention to the corporation tax. The Australian colonies were first in the field with the inheritance tax, later developed the income tax, and have scarcely yet realized the importance of the corporation tax. The American commonwealths, finally, were the first to introduce the corporation tax, have more recently turned their attention to the inheritance tax, and have done little more than to debate the income tax. The differences are suggestive, but are easily explicable when we recall the economic conditions in each country. With all the variations in detail, it is clear that the democratic trend is in one general direction; and it is more than probable that progressive inheritance taxes will play by no means an insignificant rôle in the fiscal systems of the future.

[1] The federal tax applies only to personal property over $10,000. On estates between $10,000 and $25,000, the rate varies according to five classes of relationship, from three-quarters of one per cent to five per cent. On estates from $25,000 to $100,000, these rates are increased one-half; from $100,000 to $500,000 they are multiplied by 2; from $500,000 to $1,000,000 by 2½; over $1,000,000 by 3. On the highest amounts the tax thus varies from two and a quarter to fifteen per cent. The total tax, federal and state, would thus in several states amount to twenty or twenty-one per cent.

CHAPTER VI.

THE TAXATION OF CORPORATIONS.

I.

THE HISTORY.

In a previous chapter we have considered the inadequacy and practical failure of the general property tax. In all ages and in all countries it has been found almost impossible to reach intangible personalty. What has always been a difficult task has become immensely complicated to-day through the growth of the modern corporation. At present, especially in industrial countries, the far greater part of the personalty in the hands of individuals consists of intangible property — mainly of corporate securities. The first reform of our direct taxation, therefore, is conceded by all to lie in this direction. Governments are everywhere confronted by the question how to reach the taxable capacity of the holders of these securities, or of the associations themselves. Whom shall we tax and how shall we tax them in order to attain a substantial justice? Perhaps no question in the whole domain of financial science has been answered in a more unsatisfactory way. In the United States we have a chaos of practice — a complete absence of principle; in Europe, with the possible exception of England, the situation is scarcely, if at all, better. Moreover, in spite of the generally recognized need of reform, there has thus far been no comprehensive attempt, from the standpoint of theory, to evolve order out of the chaos into which the whole subject is plunged.[1]

[1] The only book on this subject is Dietzel's *Die Besteuerung der Aktiengesellschaften in Verbindung mit der Gemeinde-Besteuerung*, 1859. This, however, has no application to American conditions; the distinctions it seeks to make are largely valueless, and the whole book is antiquated.

The first requisite in any scientific investigation of this kind is to have the facts; for without a knowledge of existing conditions, any propositions for reform would be valueless. Nevertheless, the facts of corporate taxation have never been presented in their entirety. Given the laws, it is necessary next to consider the interpretation put upon them by the courts.[1] Even then we have only the legal, not the economic view; for, unfortunately, good law is not always sound economics. It is therefore advisable to subject the legal principles involved to an analysis from the economic point of view. Only after such an examination and comparison of the facts of taxation in the United States and in Europe, will it be possible to reach any conclusions that may lay claim to scientific precision. Only such conclusions, arrived at through such a method, should be made the basis for practical reforms.

This then is the program of the present series of chapters on the taxation of corporations. The great importance of having all the facts accurately stated leads me at the outset, even at the risk of tediousness, to an examination of the history and of the actual conditions of such taxation in the United States, while the theory and criticism will be reserved for future consideration.

I. *Early Taxation of Corporations.*

During the first two decades of this century, banks and insurance companies formed the chief examples of corporations, apart from the numerous turnpike roads and toll bridges. During the twenties and thirties the development

[1] This chapter, as well as the two immediately following, will contain few direct references to the laws and the legal decisions. For a full statement of the laws as they existed in 1890 the reader is referred to the notes in the original articles in the *Political Science Quarterly*, vol. v., from which the present chapters are adapted. When the present tense is used in the following pages it refers to the conditions as they existed in 1895, the date of the first edition of this volume. Although there have been several changes in detail since that date, the fundamental principles have remained the same.

of transportation facilities led to the creation of many canal and railway companies; and it was not long before many other forms of commercial and industrial enterprise followed in the same path of incorporation. The early tax laws made no mention of corporations. But as the general property tax was in vogue throughout all the commonwealths, it was tacitly assumed that the property of artificial as well as of natural persons was liable. Corporations were new institutions which the legislators in happy-go-lucky fashion, tried to tax under existing methods, whether they naturally belonged there or not. Our Solons had neither the leisure nor the inclination to make a more careful study of the subject.

The first commonwealth law which treated of the taxation of corporations in general was the New York law of 1823. This provided that "all incorporated companies receiving a regular income from the employment of their capital" should be considered "persons" liable to the general property tax. They were required to make returns to the county officers of all their property and their capital stock, paying the tax themselves and deducting it from the dividends of stockholders. They might, however, commute the tax by paying to the treasurers of the counties where they transacted business ten per cent on their "dividends, profits, or income," (which the legislator evidently presumed to be identical). These taxes were paid by the county officers to the state, and were then credited to the counties in proportion to the amount of stock held within each county, after deducting the state tax.

In 1825 and again in 1828 the system was slightly changed so as to conform more closely to the general property tax. The tax was made applicable to "all monied and stock corporations deriving an income or profit from their capital or otherwise." The real estate of these corporations was separately taxed; and in addition, they paid the property tax on their capital stock paid in or secured to be paid in, deducting the amount paid for real estate and the stock belonging to the state and to literary and charitable institutions. Manu-

facturing and turnpike companies paid on the cash value, not on the amount, of the capital stock; turnpike, bridge and canal companies, whose "net income" did not exceed five per cent of the capital stock paid in, were exempted; while manufacturing and marine insurance companies under the same conditions might commute by paying five per cent of their net income. It is thus seen that by this law corporations were divided into different classes, and that the system followed was the general property tax, with the exceptions that if a corporation had no profits it paid no tax on its stock, and that certain classes might commute by paying an income tax to the local officials. This remained the tax system, except for banks and for foreign insurance companies, until the middle of the century.

In 1853 the total exemption of non-profit-paying corporations was abolished and all companies were taxed on their real estate and on their capital stock, together with their surplus profits or their reserved funds in excess of ten per cent of the capital, with the same deductions as above. All corporations, however, whose profits did not equal five per cent on the capital stock might commute by paying five per cent on their "net annual profits or clear income." It seems that very few ever availed themselves of this doubtful privilege, and accordingly in 1857, the law was again changed. The principle of commutation was abandoned; and since there was no distinction between profitable and unprofitable companies, so far as personal property was concerned, all corporations were taxed on their realty and on the actual value (not the amount) of their capital stock plus the surplus profits or reserve in excess of ten per cent of the capital. In addition to the previous deductions a further abatement was made for the capital invested in taxable shares of other companies. The remainder was then taxed in the same manner as the other personalty and realty of the county. This remained the law of New York, with the exception of some special provisions as to banks and insurance companies, until the recent changes in the taxation of corporations. These

changes, however, affect only taxation for state purposes, leaving the local taxation still governed by the provisions of the law of 1857. Foreign corporations, however, are taxable for local purposes, under a law of 1855, on all sums actually invested in the state.

It appears, then, that the New York system was a taxation of the real and personal property of corporations by the local assessors, and that the personal property was virtually defined as the capital stock not invested in real estate. In the other commonwealths, where corporations were taxed at all they were included in the general property tax; and most of the laws lacked even such provisions as those of the New York statute in reference to the capital stock. A typical enactment of this kind is the Connecticut law of 1826, which provided simply that the personal property of a corporation should be taxed in the place where its principal business was transacted. In Massachusetts, on the other hand, where the first general law was passed in 1832, only the real estate and machinery of corporations were taxed. In lieu of the tax on personalty there was substituted the property tax on the corporate shares in the hands of individuals, a proportionate amount being deducted from each for the part of the capital stock invested in machinery and in real estate. Even this was still in theory the general property tax. In the other commonwealths, when the corporation was taxed, the shares in the hands of individuals were usually exempt. The only state which from the very outset broke with the principle of the general property tax was Pennsylvania, whose method we shall learn a little further on.

With this one exception, then, the early principle of corporate taxation was the assessment of all real and personal property by the local officials; corporations, in other words, were taxed by the same method as individuals. This primitive system has been retained up to the present day by many commonwealths for almost all classes of corporations; and in eight states, indeed, the constitutions require that corporate property be taxed in the same manner as that of indi-

viduals.[1] The practical defects of such a system, however, have led to numerous changes in many of the progressive states, and the tendency is everywhere away from the original plan.

In a previous chapter we have seen that the shortcomings of the general property tax were five in number: inequality of assessment, failure to reach personalty, incentive to dishonesty, regressivity and double taxation. With few exceptions, these objections are as applicable to the taxation of corporations as to that of individuals. All the facts here to be recounted set the stamp of disapproval upon the original plan. In the words of a celebrated report on taxation, this method of assessing corporations locally on their general property, is "as a system, open to almost every conceivable objection."[2]

II. *Development of the Corporation Tax.*

As a result of these practical defects many commonwealths[3] have abandoned in part, or altogether, the taxation of corporate property by local officials. The movement away from their original position has taken three directions: (1) the property of transportation companies, especially railroads, has been assessed separately by a special board and according to well-defined rules; (2) certain classes of corporations, beginning with banks and insurance companies, but gradually including transportation companies and in a few cases other corporations, have been taxed, not on their property, but on certain elements supposed to represent roughly their taxable capacity; (3) all corporations have been taxed by a uniform rule, according to principles varying more or less in the different commonwealths.

[1] Alabama, Colorado, Florida, Iowa, Mississippi, Nevada, Ohio and South Carolina.

[2] *Taxation of Railroads and Railroad Securities.* By C. F. Adams, Jr., W. B. Williams and J. H. Oberly, a Committee appointed at a Convention of State Railroad Commissioners, *etc.* (1880), p. 8.

[3] The word commonwealth is here used to include the territories as well as the states.

The first tendency has progressed so far that only nine commonwealths[1] apply the primitive methods of the property tax to railroads. In these states, located with a single exception in the South and in the far West, the regular local assessors still include railroad property in the county assessment. Twenty-four commonwealths[2] have broken away from the original custom so far as to have the railroad property assessed for state purposes not by local officials but by a special board.[3] The tax, it is true, is imposed at the usual rate of the general property tax; but some of the difficulties of local assessments of such property have been obviated. In a few of these cases, like California, Colorado, Idaho, Indiana, Kansas and Missouri, the state boards assess the greater part of the property, like road-bed and rolling stock, but leave the remainder to be appraised by the local assessors. In most instances special rules are provided for the assessment of the track and rolling stock of roads that lie partly without the state, generally in the proportion which the state mileage bears to the whole mileage.

For reasons to be discussed later, this first reform of railroad taxation has not been completely satisfactory. The remaining fifteen[4] commonwealths, including most of the

[1] Louisiana, New Mexico, Oklahoma, Oregon, Rhode Island, Tennessee, Texas, Utah and Washington.

[2] Alabama, Arizona, Arkansas, California, Colorado, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Carolina (as an alternative method), Ohio, South Carolina, South Dakota, Virginia and West Virginia. In North Carolina, if the road is not taxed on its property it pays on gross receipts. In Kentucky and Mississippi there are additional taxes.

[3] This is known as the board of railroad commissioners in Arkansas, board of railroad assessors in Kansas, board of assessment for railroads in Alabama, board of appraisers and assessors in North Carolina, board of public works in Virginia and West Virginia, state executive council in Iowa, board of railroad commissioners in Kentucky and Mississippi, state board of tax commissioners in Indiana, and board of equalization in all the remaining cases except Florida, where the comptroller, attorney-general and treasurer act *ex officio* as assessors.

[4] Connecticut, Delaware, Georgia, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Carolina, North Dakota, Pennsylvania, Vermont and Wisconsin.

prosperous and progressive states, have therefore abandoned property as the basis of taxation, without reference to the manner of assessment. The methods adopted by them are comprised in the second of the three tendencies.

This second movement away from the property tax has consisted in subjecting particular classes of corporations to special taxes on other elements than their general property. It will be well to discuss these classes in order.

1. *Banks.*

The direct taxation of banks dates back to the beginning of this century. During the war with England the federal government imposed certain stamp duties on notes issued or discounted by banks. But this law of 1813 contained a further provision permitting the banks to compound for the duty by paying one and a half per cent on the amount of the annual dividends.

The first state law providing for a direct tax on banks was the Georgia act of 1805, which levied a tax of two and a half per cent on their capital stock and one-half of one per cent on their circulation. Massachusetts followed with the act of 1812 which imposed a tax of one-half of one per cent on the amount of their capital stock. A more important law was the Pennsylvania act of 1814, for Pennsylvania from the very outset assumed an attitude different from that of the other states. According to this law, banks were taxed at the rate of six per cent upon their dividends or net profits; if exempted from the national tax, the rate was to be eight per cent. In 1824 the rate was definitely fixed at eight per cent, and a few years later the principle of graduated taxation was introduced. The act of 1834 imposed on banks of issue a tax on dividends, which varied from eight to eleven per cent as the dividends were under six or over eight per cent, and in 1859 the law was extended to banks of discount and deposit. In 1861 this progressive tax was increased so as to vary from eight per cent if the

dividends were six per cent, up to thirty if the dividends were twenty-five. Five years later, the tax was replaced by the system to be explained below.

Ohio and Virginia were the only other states which began and for some time continued to tax banks on dividends, although several states, like Vermont, in chartering special banks sometimes inserted a provision in the charter, reserving a portion of the profits or dividends. In Ohio a tax of four per cent on dividends was imposed in 1815, but in 1816 the general banking law obliged the banks to set aside profits which at the expiration of the charter would amount to four per cent of the total stock. In 1825 this charge was commuted into a tax of from two to four per cent on dividends, and in 1831 the rate was raised to five per cent. In 1845 banks were required to pay, in lieu of the tax on dividends, six per cent on the profits, deducting expenses and ascertained losses. Five years later the taxation of profits or dividends was abolished, and the banks were henceforth taxed at the rate of the general property tax on the amount of their capital stock and contingent fund. In Virginia the dividends tax did not begin until 1846, when the banks were required to pay one and a quarter per cent on dividends. This rate was gradually changed until during the Civil War it reached seventeen per cent. In 1870 a new system was introduced, based partly on capital stock, partly on income or dividends above $1500; but in the following year the present method was adopted.

While Pennsylvania and Virginia were the only commonwealths to retain dividends as the basis of taxation, a few states taxed banks on their capital stock. Thus the Massachusetts tax of 1812, changed in 1828 to a tax of one per cent on the amount of the capital stock actually paid in, remained in force practically without change until the Civil War, when the state banks were superseded by the national banks. This tax was in addition to that levied on the individual stockholders, but, curiously enough, it applied only to the chartered, not to the free banks.

In Louisiana a tax was imposed in 1813 on the "stock in trade" of all banks. In other states, again, a special tax was levied only on the proportion of the capital stock owned by non-residents, as in the first Connecticut law of 1830, which imposed a tax of one-third of one per cent. In most of the commonwealths, however, the special state taxation of capital stock came much later, since the principle of the property tax prevailed. When the capital stock was taxed at all, it was simply as representing the personal property, and hence it was taxable locally at the general rate of the property tax. The real estate was taxed separately, as in New York, where the personal property tax was levied on bank stock and was payable by the corporation. According to the law of 1823, discussed above, the tax was assessed on the par value of the stock, but in 1847 the basis was changed to the actual market value of the stock, without deduction for debts. It is worthy of note that in North Carolina, where the taxation of capital stock did not come until 1859, the rate of the tax varied with the dividends.

Since the inception of the national banking system most of the commonwealths have again changed their methods of taxing banks. The history of this change can be well traced in the legislation of New York. According to the laws mentioned above, banks were taxable on so much of their capital stock as represented their personal property. Under these acts the banks claimed exemption for that part of their capital invested in United States bonds, but their claim was disallowed by the court of appeals, on the ground that no unfriendly discrimination was thereby shown to the United States as a borrower. In 1862, however, the national government provided by law for the total exemption from state taxation of all stocks, bonds and other securities of the United States. The court of appeals then held that this provision applied only to stock and bonds issued after the date of the law, but that all securities issued prior thereto were still taxable according to the state statute.

This decision was reversed by the federal Supreme Court, which held that any "stock of the United States constituting a part or the whole of the capital stock of the bank is not subject to state taxation." The legislature then sought to evade this decision by enacting that banks should be taxable "on a valuation equal to the amount of their capital stock," with similar deductions and exemptions as in the law of 1857; and the court of appeals pronounced this law valid, on the ground that the tax was on capital stock and not on property. This decision was in turn reversed by the Supreme Court, which held the tax to be levied on the property of the bank, and therefore subject to deduction for non-taxable investments. In 1864 the national banking act was passed, which permitted the taxation of national bank shares in the hands of individuals, but not at a greater rate than other moneyed capital. This gave the New York legislature the desired opportunity, and in 1865 it enacted a law providing that all shares in national banks should be included in the valuation of the personal property of individuals. The court of appeals held this to be valid. It must be remembered, however, that the state banks were still taxed on their capital. The Supreme Court of the United States now upheld the principle of the taxability of shares, on the ground that a tax on the shares in the hands of individuals was not a tax on the capital of the bank. Nevertheless it reversed the New York decision on a minor point, namely, that since the capital of state banks invested in national securities was exempt, a tax on the capital was not equivalent to a tax on the shareholders, and hence to tax state banks on their capital and shareholders of national banks on their shares, constituted a discrimination against national banks. This decision led to the New York law of 1866, which abolished the taxation of bank capital and provided for the taxation of shareholders of both state and national banks in the same way, *i.e.*, on the value of the shares, with deductions for the capital invested in real estate. The banks were no longer taxed on their capital,

but were required to retain the dividends from the stockholders until the tax was paid. The Supreme Court sustained this law, holding that no deduction should be made from the value of the shares for any part of the bank's capital which might consist of United States bonds. Later it decided the state tax on shares to be valid, even if it were collected from the banks. The question then arose whether it was competent for the shareholder to deduct the value of his debts, as was the case in the taxation of all other personal property. The court of appeals decided in 1867 in the negative, holding that there could be no deduction of debts from the assessment of bank shareholders. This case slumbered for thirteen years; but in 1880 a decision involving this precise question was reversed by the United States Supreme Court on the ground that "the prohibition against the taxation of national bank shares at a greater rate than that imposed upon other moneyed capital could not be evaded by the assessment of equal rates of taxation upon unequal valuations." The consequence was an alteration in the New York law, which now since 1880 permits the same deductions as in all other taxable property and which provides for the assessment of shares, whether owned by residents or non-residents, at the place where the bank is located.

The result of this development is that bank shareholders pay a large proportion, and in some towns the greater part,[1] of all the taxes on personal property, and that they alone are unable to evade the otherwise so laxly executed tax on personalty. The most recent attempt of the banks to remedy this obvious inequality has been frustrated by a decision of the Supreme Court that the words "moneyed capital," in the revised statutes, are practically confined to banks, and that the imposition of a lower rate of taxation on other corporations does not invalidate the bank tax.[2] I do not of

[1] In Albany the banks paid fifty-eight per cent of all taxes on personalty. *New York State Assessors' Report*, 1878, p. 10.

[2] The cases in their order are as follows: 23 N. Y. 192; 26 N. Y. 163; 2 Black 870; 2 Wall. 200; 33 N. Y. 161; 3 Wall. 573; 4 Wall. 244; 9 Wall. 353; 36 N. Y. 59; 100 U. S. 539; 129 U. S. 138.

course mean to plead that the banks should be treated tenderly or that they should be supported in their attempts to evade taxation; but it is a manifest incongruity that bank shareholders almost alone among owners of personalty should be taxed. That they should be singled out for what is actually heavier taxation, is one of the unjust consequences of the general property tax. The only inference is the necessity of a comprehensive reform.

This system of taxing banks, whose development has just been sketched for the state of New York, is now general throughout the country, at least in those commonwealths which do not still cling to the method of the general property tax as applied to corporations. It may be summed up as the separate taxation of real estate plus the taxation of the shares in the hands of individuals, whose tax is generally paid by the bank and then withheld from the dividends. Some commonwealths have enacted more detailed provisions to avoid the confusion arising from the taxation of non-residents' stock. The Massachusetts law, for example, which dates back to 1868, provides that the assessors of a town where a national bank is located shall omit from the town valuation all shares held by non-residents, and that the taxes paid by the bank on these shares shall be credited to the places where the owners reside. In Connecticut the shares of non-residents are not taxed at the usual rate, but the banks themselves pay one per cent on the market value of such shares as a "non-resident stock tax."

A few commonwealths still tax banks directly on their capital stock at a special rate. In Pennsylvania, for example, the shares pay four mills on the dollar, but incorporated banks may elect, as all do, to pay instead eight mills on the par value of their capital stock. They are then liable only for the local real estate tax and for the state tax on their moneys at interest. A three per cent net earnings or income tax applies only to the unincorporated banks without capital stock. In Kentucky, where the banks are taxed on capital and surplus, they waive all rights to a

different mode or smaller rate of taxation. In a few cases, however, we find a mixed system. Thus in Georgia banks are taxed not on their capital, but on their property, so far as the value of the property is not represented in the market value of the shares. The shares are then taxable in the hands of the shareholders and the bank itself is further taxable on its surplus and undivided profits. Finally, in some of the Southern commonwealths, as North Carolina and Florida, we find in addition to a tax on bank shares a license tax fixed according to capital or to business transacted. New York has a special law taxing foreign banks at the rate of one-half of one per cent on their deposits or moneys used in their business.

There remains the subject of savings banks. When they are not incorporated stock companies, several states, including all New England, tax them on their deposits, at rates ranging from one-quarter to one per cent. In Massachusetts, where, up to that time, the deposits had been nominally taxable as the personal property of the individual depositors, the new system came into use in 1862; in Vermont, not until 1878; in the rest of New England, in the interval. In Massachusetts, however, deposits invested in real estate or mortgages on real estate are exempt. In Maine the tax since 1893 is on deposits, reserve fund and undivided profits, less certain deductions.[1] In other cases, as in New York, deposits are expressly exempted from taxation, but savings banks are then taxed for local purposes on their surplus not invested in United States securities, and the individual depositors are taxable on their deposits as property. In Pennsylvania

[1] The deposits, reserve fund and undivided profits are added together. Deductions are allowed for the amount invested in federal bonds; for the assessed value of the real estate; for one-seventh of other assets, loans and investments acquired before 1893; for two-sevenths of loans to persons doing business in the state, of investments in mortgages in New Hampshire and Maine, of securities of the state, of bonds issued or guaranteed by corporations located and doing business in the state, of the cash on hand and of cash deposits in the state. The remainder is declared to be the value of the franchise, which is then taxed at the rate of seven-eighths of one per cent.

savings banks are taxed in the same way as other banks,—that is, if they are neither incorporated nor possessed of any capital stock, they pay four per cent on their net earnings or income; otherwise they pay eight mills on the par value of their stock. In most of the remaining commonwealths there is no special taxation of savings banks, unless they are incorporated. If incorporated in Iowa and Ohio they pay the usual property tax on their paid-up capital, but their deposits and franchises are expressly exempt. The depositors, however, are taxed.

In the matter of bank taxation, therefore, we are beginning to reach uniformity except in the case of savings banks. But the uniformity, so far as its exists, has been imposed upon the states by the national law. Even this approach to a solution of the problem, moreover, as will appear later on, has not been entirely satisfactory.

2. *Insurance Companies.*

The next corporations to break away from the general property tax were the insurance companies. At first only foreign companies[1] were taxed. The earliest law was that of 1824 in New York, which provided that foreign fire insurance companies should pay ten per cent on all premiums for property insured within the state. In 1829 the law was extended to foreign marine insurance companies, and in 1837 the rate was reduced to two per cent. Domestic companies were taxable on their capital stock, like all other corporations, according to the general law of 1828. Ohio started out by taxing insurance companies as well as banks, assessing them in 1830 four per cent on their dividends. But this form of taxation was soon aban-

[1] The use of the term *foreign corporations* in the American statutes is confusing. Generally it designates companies incorporated in another of the American commonwealths. In only a few cases does it refer to non-American states. In these chapters it will be used in the former sense unless otherwise indicated.

doned. In Pennsylvania, where domestic companies were included in the general law of 1840, foreign insurance companies were not specially taxed until 1849, when the law imposed a tax of one per cent on the gross premiums of foreign life insurance companies. In Maryland the custom dates from 1839, when a tax of two per cent was imposed on the premiums received by the agents of foreign insurance companies. In Vermont foreign fire insurance companies were taxed eight per cent on their premiums in 1825; but the law was repealed five years later. In Massachusetts the tax was first levied by the law of 1832, which is of special interest as the prototype of what is known in several of our commonwealths to-day as the "reciprocal acts." The act provided that if any commonwealth taxed the agents of Massachusetts insurance companies, the insurance companies of such commonwealth were to pay one-half of one per cent on the whole amount insured by such companies in Massachusetts. At present the reciprocal acts go somewhat further and prescribe that foreign insurance companies are to be taxed at the same rate (if higher than the home rate) that is imposed on home insurance companies by the commonwealth chartering the foreign company; but if the tax imposed by the foreign commonwealth is not higher, the foreign companies pay as a rule two per cent on premiums. Such reciprocal acts are found in Connecticut, Illinois, Kansas, Maine, Massachusetts, New York, Ohio and Vermont. The Kansas court calls them "an appeal for comity," "a demand for equality;"[1] but in reality they are retaliatory, rather than reciprocity, laws.[2]

This premium tax on foreign companies was gradually extended to domestic companies, until at present it is found in almost every commonwealth, only a few of the Western states clinging to the original custom of taxing them on their property. Occasionally the tax is known as an insurance license or an insurance fee. In some of the Southern

[1] *Cf.* 29 Kan. 672.

[2] Alabama declared them unconstitutional for this reason; 60 Ala. 217. In the other states they have been upheld.

states, like North Carolina, the companies must pay both fees and taxes. In a few cases, as in Alabama, Connecticut, Indiana, Missouri and West Virginia, the principle of taxing premiums has been applied only to foreign companies, while home companies are still taxed on their property, assets or surplus. Many commonwealths make a further distinction between domestic and foreign companies, taxing the latter more than the former. Thus Kentucky, Maryland and Ohio tax the gross receipts of foreign companies only. In Pennsylvania domestic insurance companies (except mutual companies) pay eight-tenths of one per cent, and foreign companies two per cent on premiums. Delaware imposes a small license on domestic companies, but levies a gross receipts tax on foreign companies. In Minnesota foreign companies pay the property tax plus a two per cent premiums tax; but domestic companies pay only a real estate tax plus the premiums tax, while domestic mutual life companies pay no premiums tax at all. In New Jersey insurance companies, other than life, are taxed one per cent on premiums, while domestic life insurance companies pay one per cent on their surplus plus thirty-five one-hundredths of one per cent on premiums; but the payments from the foreign companies are credited to the domestic companies. In New York domestic life insurance companies are exempted from taxation, but foreign companies pay two per cent on premiums; and while all fire and marine insurance companies pay the same tax for state purposes, the foreign companies alone pay an additional local tax.

Although the premiums tax is the general tax, we find some instances where taxes are based on different elements. Some of the Southern and a few of the Western states, like Mississippi and Idaho, impose license or privilege taxes of a fixed amount. In Louisiana the gross receipts tax is graduated. Other states combine various taxes. Thus we find in Virginia the general property tax on a company's realty and personalty, a specific tax of $200, and an additional tax of one per cent on gross receipts in the state. Massachusetts

usually only to state, not to local, taxation. So that insurance companies are almost everywhere subject to the ordinary local taxes.

From the above summary it appears that life insurance companies, especially mutual companies, are in general treated differently from other insurance companies. The reasons are obvious and well founded. Yet in Texas and Vermont life insurance companies are taxed more heavily than others.

3. *Railroads.*

A complete history of the development of railway taxation would occupy an entire book; hence, it will be possible here to say only a few words about some of the typical commonwealths.

In Pennsylvania, railroads were included in the general tax law of 1840, and were assessed on their personalty and on their dividends. In 1844 the tax on personalty was abandoned, but the general corporation tax on capital and dividends continued with some modifications for over two decades. In 1860 a special tonnage tax was levied on transportation companies at the rate of two, three and five cents per ton of freight carried, and an additional tax of three-quarters of one per cent was laid on their gross receipts. The former was declared unconstitutional by the federal courts, and as a result, by the act of 1874, all transportation companies were taxed only on their capital stock, at the rate of nine-tenths of a mill for each one per cent of dividends, or at the rate of six mills if there were no dividends. In 1879 the dividends and earnings taxes were slightly changed, and the law was passed which, with the amendments of 1885, 1889 and 1891, is in force to-day. In New York, railroads were subject to the general property tax until 1880, when a law was enacted which with some modifications is now in force. In New Jersey, railroads were subject to the general property tax until 1873, when a tax was imposed at the rate

of one-half of one per cent on their cost, equipment and appendages. Three years later the cost tax was abandoned, and a tax at the same rate was imposed on the true value of the roads. This system prevailed until 1884, when the present method was introduced.

In Connecticut, the law requiring certain stock companies to make returns of the stock owned by individuals was extended in 1846 to railroads. Three years later every railroad that had paid a dividend in the preceding year was required to pay one-half of one per cent on the market value of the shares held by non-residents; but if the railroad was partly out of the state, the tax was to be proportioned to the mileage in the state. This system worked so well that in 1850 it was extended to resident stockholders, and was made one-third of one per cent in lieu of all other taxes. In 1862 the rate was increased, but the provision was inserted that the stock should not be assessed at less than ten per cent of the par value. In 1864 the outlines of the present system were drawn by requiring the companies to add to the valuation of the stock the market value of the funded and floating indebtedness less the cash on hand, and to pay one per cent on this valuation in proportion to the mileage in the state. In 1871 it was provided that if the railroad paid any local tax this might be deducted from the state tax. In 1881 a deduction was made from the taxable valuation for such portion of its debt as was contracted for stock taken in other roads. In 1882 the funded and floating debts and bonds were to be valued at par unless the market value was below par. And in 1887 the present law, with substantially the same provisions, was enacted.

After this hasty glimpse at some of the typical forms of development, let us now study the actually existing chaos. Chaos we say, because the remark of the railroad tax committee of 1879 still holds good to-day, that "there is no method of taxation possible to be devised which is not at this time applied to railroad property in some part of this country.

stated that the New Jersey assessors have endeavored to estimate the franchise by taking sometimes an arbitrary proportion (sixty per cent) of the surplus of the value of the capital stock and total indebtedness over the value of the tangible property, sometimes a percentage (twenty per cent) of the gross earnings. The railroads must pay one-half of one per cent on this entire valuation, both property and franchise, for state purposes, and in addition they pay to the state a tax at the local rate on the value of their real estate in each taxing district outside of the main stem. This portion of the tax, however, which is really a property tax, cannot exceed one per cent of the value, and is returned by the state to the taxing district.

In Connecticut, railroads are required to pay a tax of one per cent on the valuation of their capital stock and on the par value (or on the market value, if below par) of their funded and floating debt above the amount in the sinking fund. If only part of a railway is in the state, the company pays on such proportion of the above valuation as the mileage in the state bears to the total mileage, omitting the value and length of such branch lines as are of less than one-quarter the average mileage value of the trunk line. The alternative law of Vermont is very much the same. The old law taxing railroads on their gross receipts was declared unconstitutional. The new law of 1890 taxes them seven-tenths of one per cent on an appraised valuation equal to the market value of the bonds and stock, consideration being taken in each case of the value of the corporate franchise. The appraisement is made partly on gross, partly on net earnings. If the railroad does an interstate business, the total valuation is divided by the number of miles of the main line to get the average value per mile, and this is then multiplied by the mileage within the state.

Among the commonwealths which assess railroads on their gross earnings, five grade the tax according to the age of the road or to the amount of the earnings. The

A more discouraging example of general confusion could hardly be imagined."[1]

As stated above, fifteen, or including Mississippi, sixteen commonwealths have abandoned property as the basis of the tax; and of these, the majority now assess the railroads on earnings. Nine levy a tax ranging from one-quarter of one to five per cent on gross earnings only.[2] Wisconsin, however, combines in some cases a mileage tax with the earnings tax. Washington until 1888 also had an earnings tax. Three commonwealths—Massachusetts, New York and Pennsylvania—include railroads in the general corporation tax, but New York and Pennsylvania levy an additional tax on gross earnings (one-half and eight-tenths of one per cent respectively), while Massachusetts also levies a commission tax on gross earnings in proportion to mileage, and in the case of corporations to construct railroads in foreign countries substitutes a tax of one-twentieth of one per cent on capital stock. Mississippi taxes railroads at a fixed sum per mile, according to the reputed wealth or earning capacity of each road, in addition to the property which is declared to include the value of the franchise. Delaware levies six separate taxes, *viz.*: on capital stock (one per cent), net earnings (ten per cent), locomotives ($100 each), passenger cars ($25), freight cars ($10) and passengers (ten cents each); but the companies may pay a gross sum in commutation of the passenger tax. In New Jersey, the law directs the board of assessors to ascertain the value of the main stem, of the other real estate and of the tangible personalty. This would really be a property tax were it not that the assessors are further directed to ascertain the value of the franchise. The whole question of corporate franchise will be deferred to the succeeding chapter; but it may be here

[1] *Taxation of Railroads and Railroad Securities*, p. 1.

[2] Georgia, Maine, Maryland, Michigan, Minnesota (where companies may commute in this way for the property tax), North Carolina, North Dakota, Vermont and Wisconsin.

poses. In New York, under the general corporation-tax law, the real estate of railroads is taxable for state purposes; and both realty and personalty are taxable for local purposes. But only the value of the realty is deducted from the total valuation of the stock for the commonwealth tax. Finally, in the five remaining states — Michigan, New Jersey, Pennsylvania, Vermont and Wisconsin — the railroads are subject to a local tax only on that part of their property not used for railroad purposes. In New Jersey, this local tax must not be confounded with the "tax on the taxing districts" described above, which is in reality also a local tax. In Pennsylvania, all property necessary to the successful operation of the railroad including stations, water tanks, *etc.*, but not city offices, has been held to be a part of the franchise, and therefore not locally taxable. In Wisconsin railroad property, even though used for railroad purposes, may be assessed in cities and villages, for local improvements only.

Besides these fifteen commonwealths which have broken away from the old property tax, four states which retain this as the main feature add other taxes not based on property. Thus, in Alabama we find a "license tax" on gross earnings, to defray the salaries of the commission; in North Carolina a privilege tax of one-half of one per cent on gross receipts (if only the personal property is taxed) and a franchise tax, at the general rate of the property tax, assessed on the value of the franchise as estimated by the board of appraisers; in Texas a tax of one-quarter of one per cent on gross passenger earnings; in Virginia a tax on gross earnings, to pay the salaries of the commission, and a tax of one per cent on net income. Again, some of the Southern commonwealths impose special licenses on the railroads. Finally, we find in a few commonwealths, like Delaware, Illinois, New Jersey, North Carolina and Pennsylvania, special taxes levied on special railroads.

This survey will suffice for a picture of the existing chaos. The theory and criticism must be left to a subsequent section.

4. *Other Transportation and Transmission Companies.*

The taxation of telegraph companies has undergone an evolution similar to that of railroads, although not quite so complicated. In the majority of commonwealths, telegraph property is included by the local assessor in the general tax list and pays the regular rate of the general property tax. In a few cases, as in Florida, Iowa and Ohio, it is separately assessed by special officers, but still pays the general rate. In a few other cases again, as in Maine and New Hampshire, telegraph companies pay on the value of their property, but at a fixed rate which remains constant from year to year. In twenty-one commonwealths, however, telegraph companies pay a special tax based not on property but on other elements. Here again, as in the case of other corporations, the special tax is in some states applicable only to state taxation, while the local tax is still assessed on the general property. In eleven cases [1] the system of taxing gross receipts prevails, although applicable in West Virginia only to foreign companies. Six commonwealths tax the companies on mileage, the rate generally decreasing with each additional wire.[2] Mississippi imposes a privilege tax of $3000 ; or if the line is less than one thousand miles long, makes the tax one dollar per mile. Tennessee grades the tax according to the population of the towns ; Virginia levies a property tax, a one per cent gross earnings tax, and a license tax of $250 ; Alabama, a privilege tax of $500, together with a tax of one dollar per mile of line. Indiana takes as a basis for assessment the value of the capital stock plus the bonded debt, if any, deducting the assessed value of real estate situated outside the state. After taking from this valuation a part, proportionable to the ratio which the mileage in the state bears to the total mileage, the board

[1] Georgia, Louisiana, Maryland, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Vermont and West Virginia.

[2] Connecticut, Delaware, Florida, Kentucky, North Dakota and Wisconsin.

deducts the real estate and machinery taxable locally, and divides the remainder by the mileage in the state. The resulting value per mile is then taxed at the usual rate of the property tax, each county getting its share.

The tendency seems to be toward the mileage tax; for several commonwealths, like Alabama and Connecticut, which formerly levied a gross receipts tax, have now substituted the tax on mileage. In Vermont also the telegraph companies may elect to pay, in lieu of the tax on gross earnings, sixty cents per mile of pole and one line of wire, plus forty cents per mile for each additional wire. On the other hand Minnesota, which formerly (since 1867) levied a mileage tax, changed it in 1887 to a gross receipts tax, and in 1891 again changed to a tax on property, now assessed by a board of equalization. These instances show the utter lack of uniformity or principle in American taxation.

Telephone companies have lately been subjected to special taxes in all but one of the same commonwealths. In ten cases, the tax is the same as that on telegraph companies;[1] in the remaining cases it is slightly different. Thus, in Connecticut it is twenty-five cents per mile of wire and seventy cents for each telephone transmitter; in Florida, it is $100 on each telephone plant in each county, unless the line is less than twenty-five miles long, when it is only $25; in Georgia, it is one dollar for each telephone station or box; in Kentucky, one-quarter of one per cent on gross receipts; in New Hampshire, the usual property tax; in Mississippi, it is graded according to the number of subscribers; in Texas, twenty-five cents for each telephone; in Wisconsin, a "license fee" of one and a half per cent on gross receipts; and in Virginia, a general property tax, a license tax of $100 and a gross earnings tax of one per cent.

Express companies are subject to much the same taxes as telegraph companies. Fourteen commonwealths tax them

[1] Indiana, Iowa, Louisiana, Minnesota, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island and Vermont.

on gross receipts.[1] In some states, as in Maryland and West Virginia, the gross receipts tax applies only to foreign companies, the domestic companies being subject to the general property tax. As a matter of fact, however, almost all the express companies are foreign companies. In New Mexico and South Carolina they are taxed on net receipts. In many of the Southern states they pay a license or privilege tax either fixed or according to mileage, sometimes in lieu of the property tax, sometimes in addition to the property tax, and sometimes in addition to other taxes. Thus in Florida there is a tax of $1500 per annum; in Kentucky, a license tax of $500 to $1000 in addition to the local property tax; in Mississippi, a privilege tax of $500, together with a tax of one dollar for each mile of railway along which they operate, and a local property tax; in Tennessee, a tax of from $1000 to $2000 according to mileage; in Alabama, a tax of one dollar per mile, if the line does not exceed five hundred miles in length, or beyond that, from $1000 to $5000 according to mileage. In Virginia they pay a license tax of $300 to $500 according to mileage, a property tax and an income tax. In Missouri they pay the property tax on their tangible property in addition to a tax of one and a quarter per cent on gross receipts within the state, deducting the amount paid by them to railroad or steamship companies for transportation. In Indiana a somewhat similar law was changed in 1891, so that express companies are now taxed on a valuation ascertained, as in the case of telegraph companies, according to mileage as explained above. In Arkansas the capital stock is also assessed according to mileage. In New Hampshire express companies may pay, in lieu of the "license" on gross receipts, a fixed sum of five dollars per mile.

From the fact that the large express companies are generally unincorporated, the question has recently arisen whether

[1] Alabama, Connecticut, Delaware, Georgia, Louisiana, Maine, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island and Vermont.

they are liable to the corporation tax. In Vermont and Pennsylvania joint-stock companies are expressly included. In New Jersey the tax law applies only to corporations. In New York express companies have been declared liable to the state corporation tax because the statute expressly applies to joint-stock companies;[1] but under the provisions of the revised statutes imposing a tax on "all monied or stock corporations," which still governs local taxation in New York, it has been held that express companies are not liable.[2] There is, of course, no good economic reason for their exemption.

Finally, we may mention the palace and sleeping-car companies. The special tax on these companies, which is found in a few commonwealths, is based on various elements. In Florida, Michigan, New Jersey, New Mexico, New York, North Dakota, Pennsylvania and Vermont, it is on gross receipts. In Arkansas, Texas and Virginia, it is on capital stock according to mileage; but in Virginia there is an additional tax on income. In Georgia and Iowa, it is proportioned to the number of cars and the miles run; in Nebraska it is proportioned not only to the number of cars, but also to the average time employed within the state. In Indiana, the method of taxation is similar to that described above for telegraph companies. In a few of the Southern states, like Alabama and Tennessee, license and privilege taxes of fixed amount are imposed; but in Alabama there is an additional mileage tax. In some cases, like Georgia and Missouri, railroad companies are taxed for their sleeping cars, but may then recoup from the sleeping-car companies.

5. *Miscellaneous Corporations.*

In addition to the taxes already mentioned, a few commonwealths levy taxes, mostly of very recent date, on other specified corporations. In order to make the survey complete, they will be noted here. We find in Alabama a tax of one per cent on the gross receipts of cotton

[1] 117 N. Y. 136.

[2] 133 N. Y. 279.

pickeries and seed-oil mills, and on the gross income of gas-works, waterworks, electric-light companies, ferries, toll-bridges, public mills and gins, and cotton compresses; but as the tax is levied only after deducting the expenses for carrying on such business, it is really on net income. In Connecticut, there is a tax of two per cent on the gross receipts of rolling-stock companies, and a so-called "tax on investment companies," consisting of one per cent on *choses in action* sold or negotiated, deducting non-taxable bonds registered with the state treasurer. The tax on railroads has also been extended to street railways. In Florida, electric-light, water and gas-light companies must pay a license tax of $100 for each plant in each county.

In Kentucky, we find a tax on the stock of turnpike companies at the rate of seven per cent on net dividends; also a tax on street railroads; a "tax on city corporations" (which is in reality simply a tax on coffee-house licenses in Frankfort); a graduated tax on gas and electric-light companies, waterworks, cotton compresses, cotton pickeries, slaughter houses, liquor distilleries and tobacco factories; and a two per cent tax on the gross premiums of foreign building and loan associations. In Louisiana, there is a tax on the gross receipts of horse railroads. In Maine, there is a similar tax, but with a graduated scale of one-tenth of one per cent for every thousand dollars; a franchise tax on trust and loan associations like that on savings banks described above; and a tax of one-quarter of one per cent on the monthly capital dues of building associations.

In Massachusetts, we find a tax of one-twentieth of one per cent on the capital stock of companies for the purpose of coal mining or extracting carbonaceous oils; but if the company is incorporated in the state, the tax is one of four per cent on the net profits. We find there also a "gas commissioners tax" on the gross earnings of gas companies; and a "gas light companies tax" on the appraised valuation of their property to defray the expenses of the inspectors of gas meters. In Michigan, the special tax on

mining, smelting and refining companies of seventy cents per ton of copper, one cent per ton of iron, and five mills per ton of coal obtained, with a real estate tax on mining companies on the excess over six hundred and forty acres, was repealed in 1891; but there now exists a tax of two per cent on the gross receipts of special freight lines or car-loaning companies, and a like tax on the gross receipts of surety and guaranty companies. In Minnesota, mining corporations must pay in lieu of all other taxes a commutation tax of fifty cents per ton of copper, and one cent per ton of coal mined; and there is also a reciprocal law for building and loan associations. In New Hampshire there is a tax of one per cent on the stock of building and loan associations, and a tax like that on savings banks on the capital and deposits of trust companies. In New Jersey there is a tax on oil or pipe-line companies of eight-tenths of one per cent on the gross receipts; and on gas and electric light companies of one-half of one per cent on gross receipts, and five per cent on dividends in excess of four per cent. There is also a tax of two per cent on the gross receipts of cable companies. In New York we find a "pool tax" on racing associations — five per cent of the gross receipts for admission. In Pennsylvania electric-light, street passenger railway, pipe-line, slack water navigation, canal or other transportation and transmission companies pay eight-tenths of one per cent on gross receipts, in addition to the general corporation tax. In Rhode Island there is a tax of one-quarter of one per cent on the deposits of trust companies. In Vermont we find a tax of one per cent on building and investment trust companies, and of two per cent on the gross receipts of steamboat, car and transportation companies (other than railroads) incorporated in the state, as a tax alternative to the one described above. In Virginia, steamship and transportation companies are taxed on their property and also at the rate of one per cent on their income. Finally, in some of the Southern commonwealths, license fees or "privileges" are im-

posed on corporations following certain specified lines of business. In almost all of these commonwealths the taxes referred to are state taxes, while for local purposes the corporations are usually still subject to the general property tax, or to the tax on real estate and capital stock.

The third movement away from the property tax has been, as noted above, the introduction of a tax applicable to all corporations in general. We come thus to

6. *The General Corporation Tax.*

Here again Pennsylvania took the lead, for in that state the tax is far older than might be imagined from its recent introduction into other commonwealths. We have already seen that in 1824 Pennsylvania imposed a tax on the net dividends of banks. In 1836 the tax was extended to iron companies, at the rate of eight per cent on all dividends exceeding six per cent. In this provision can be found the germ of the later laws. The first general corporation tax, imposed in 1840, provided that "banks and all corporations whatever" which declared a dividend of one per cent should pay "in addition to all present taxes" one-half mill for each dollar of the dividend or profit, and an additional one-half mill for every additional one per cent of dividend. In 1844, however, an act was passed which sketched in broad outline the path of future development. According to this law all domestic corporations which made or declared a dividend or profit of at least six per cent paid a tax on capital stock of one half mill for each one per cent of dividend; but if the dividend was less than six per cent, the tax was three mills on the dollar. This law continued until the act of 1859 provided that the three mill tax should be paid only if no dividend was declared; but that in case of any dividend (not, as before, a six per cent dividend) the tax should be one-half mill on the capital stock for each one per cent of dividend. In 1864 it was provided that corporations

not paying to the state a tax upon dividends should pay three per cent on net earnings. The consolidated act of 1868 excepted from the general corporation tax only banks, savings institutions and foreign insurance companies (all of which were separately taxed), but imposed a tax of three per cent on the net earnings or income of all corporations, except those liable to the tonnage tax, *i.e.* the transportation companies.

The important feature of this law, however, was that the corporation tax was now made applicable to all companies incorporated or doing business in the state, *i.e.* to foreign as well as to domestic corporations. Only from 1868, therefore, was the Pennsylvania tax a general corporation tax. The general law of 1874 made no change except in respect to transportation companies as mentioned above, and with the further exception that coal companies were to pay a franchise tax of three cents per ton transported. In 1879 the line of division in the tax was again drawn at dividends of six per cent — that is, the principle of the law of 1859 was abandoned and that of 1844 reinstated. Limited partnerships, except those organized for manufacturing or mercantile purposes, were put on the same footing as corporations; and the tonnage tax on coal companies was limited to 1881, after which it was to cease. Manufacturing corporations with certain exceptions were exempted from taxation for state purposes, and a loan tax of four per cent was imposed, applicable also to the bonds of corporations. In 1885 the latter was reduced to three per cent. In 1889 the rate was fixed at one half mill for each one per cent of dividend, if dividends amounted to six per cent, and at three mills when dividends were less than six per cent. Finally, in 1891 this plan was abandoned and the present amendments were adopted.

Under the law as it now stands in Pennsylvania, the "tax on corporation stock" applies to all corporations, joint-stock associations and limited partnerships doing business in the state or having any portion of their capital invested therein, except banks and savings institutions, foreign insurance com-

panies, and manufacturing companies organized exclusively for manufacturing purposes and actually carrying on manufacturing within the state. Corporations engaged in the brewing or distilling of malt or spirituous liquors, and such as enjoy and exercise the right of eminent domain, are not included in this exception. The rate is five mills on each dollar of the actual value of the whole capital stock of all kinds. This value, ascertained by appraisement, must not be less than the average price for which the stock has been sold during the year, nor less than the value indicated by the net earnings or by the profit in dividends or by what has been carried to the surplus or sinking fund. If any profit has been added to the sinking fund, it is treated as if it had been devoted to dividends, unless it is set apart expressly for the payment of debts. In the case of fire and marine insurance companies the rate is three mills on each dollar of capital stock. In addition to this tax on corporation stock, there is a nominal tax of three per cent on the net earnings of private bankers and brokers, unincorporated banks and all corporations except those liable to the previous tax or to the tax on gross receipts. The only corporations which would be liable under this provision are banks and manufacturing corporations; but the latter, with the exceptions just noted as liable to the tax on corporation stock, are now expressly exempt from all taxation; and the former, by electing to pay eight mills on the par value of their capital stock, secure exemption from all other taxation except on their real estate. Thus the net earnings tax does not apply to corporations at all. If the banks do not elect this eight mills tax, the market value of the stock is assessed to the stockholders and taxed four mills, and the banks are further subject to local taxation. State banks must pay in addition a small tax — five dollars for banks with a capital of $100,000, and five dollars additional for each $100,000, together with a charge of two per mill for each $1000 of assets — to defray the expenses of bank examination. It has already been noted above in the proper connection that transporta-

tion, transmission, electric-light and insurance companies pay a tax on gross receipts or premiums in addition to the general corporation tax.

In addition to the tax on capital stock, Pennsylvania imposes a "tax on loans," which exacts four mills on the dollar of all interest paid on any scrip, bond or certificate of indebtedness issued by any private corporation, and on all public loans (except those of Pennsylvania and of the United States). This tax has been declared unconstitutional when applied to mortgages held by, or in the hands of, corporations. The decision was subsequently formulated into the law that corporations and associations liable to the capital stock tax shall not be required to pay any further tax on mortgages, bonds or other securities belonging to them, and which constitute any part of their assets included within the appraised value of their capital stock. But if they hold these bonds in a fiduciary capacity, they are liable. On the other hand, so much of the tax as is imposed on the loans made by corporations, *i.e.* on corporate obligations, has been upheld as a proper exercise of the legislative authority and as not in conflict with any provision of the federal constitution. It is deemed to be in effect a tax on the bondholder, not on the corporation, although the corporation is required to advance the tax and deduct it from the interest. The treasurers of corporations therefore pay the tax on all their bonds or obligations which are held by residents, and then deduct the tax from the interest due. Pennsylvania, moreover, taxes public, as well as private, corporations.

This general corporation tax, it is very important to note, is in lieu of all local taxation. In Pennsylvania, therefore, corporations subject to the capital stock tax are not, with some exceptions noted below, locally taxable.

The law of 1885 exempted manufacturing corporations (with certain exceptions) from all taxation for state purposes; but it was held that only that part of the capital of a manufacturing company which was invested in the plant actually

necessary for the manufacture of its product could be exempted, and that the capital of such companies invested in mines for the production of coal to be used in the process of manufacturing, or any other capital similarly invested, was taxable. The laws of 1889 and 1891, however, provide for the exemption of those companies only which are organized exclusively for manufacturing purposes. Manufacturing companies are held to be limited to those that produce material substances.[1] In regard to the tax on loans, since, as we have just seen, it is held to be not upon the corporation, but upon the moneys of the bondholder, manufacturing corporations, however, are liable equally with others.

Outside of Pennsylvania the general corporation tax is found only in New York; although in Maryland, Massachusetts and New Jersey there are general taxes on domestic corporations, and in a few other cases there are what may be called in one sense general taxes on corporations.

In New York the general corporation tax came later; for not until 1880 was a law passed which was based on the Pennsylvania act. This tax, as slightly altered at various times, is declared to be levied on the corporate franchise or business of all corporations, joint-stock companies or associations, except savings banks and institutions for savings, fire and marine insurance companies, banks, foreign insurance companies, agricultural and horticultural companies, and manufacturing and mining corporations wholly engaged in carrying on manufacturing or mining in the state. These exceptions, however, do not cover trust companies, gas companies, or electric or steam heating, lighting or power companies, while banks, fire and marine insurance companies, and foreign insurance companies are separately taxed. The only companies actually exempted from taxation are, therefore, domestic life insurance companies, agricultural and horticultural companies, and, with the exceptions noted, manufacturing and mining corpora-

[1] For the decisions here, as well as in the other states, see the chapter in the work referred to on page 137.

tions. The rate is just one-half that of the former Pennsylvania tax, *i.e.* one-quarter mill upon each dollar of the capital stock for each one per cent of dividends which amount to at least six per cent; but when dividends fall below six per cent the rate is one and a half mills. By exception in the case of hotel companies paying dividends less than six per cent, the tax is assessed on the excess of their capital stock over the assessed valuation of their real estate. Corporations subject to this tax are exempted from all further state taxation except on their real estate; but they are liable to local taxation on their whole property, both real and personal, according to the primitive methods. The additional taxes on other corporations have already been described under the appropriate heading.

In Massachusetts, the general corporation tax dates from 1864. In 1863 indeed, a law was enacted which taxed dividends paid by corporations to non-resident stockholders; but this was pronounced unconstitutional, and was replaced by the law now virtually in force. This tax is declared to be levied on the corporate franchise of all domestic corporations except banks and coal and mining companies, which are separately provided for; and is imposed on the market value of the shares of their capital stock, deducting the value of the real estate and machinery, which are locally taxable. The rate is determined by an apportionment of the whole amount to be raised by property taxes in the commonwealth during the year, upon the aggregate valuation of all the towns and cities for the preceding year. Every municipality is then credited with the proportion of the tax represented by the number of shares held by residents of that place, the commonwealth retaining only that proportion of the tax which corresponds to the stock of non-residents. In the case of railroads, only such proportion of the valuation of the stock is assessed as the length of that part of the road lying within the commonwealth bears to its total length. A very important point to be noticed is that in Massachusetts the tax applies only to domestic corporations, not as

in New York and Pennsylvania to foreign corporations. Massachusetts taxes the latter only on their property actually situated in the state; but, on the other hand, as we shall see later on, taxes shareholders in foreign corporations, while exempting shareholders in domestic corporations from any additional tax. Massachusetts therefore has in reality no general corporation tax.

In New Jersey, the tax on "miscellaneous corporations" dates from 1884, and is described as a "license for the corporate franchise." As amended in 1892, it applies to all corporations except railroads and canals (both of which are taxed separately), banks, cemeteries, religious, charitable or educational associations, and manufacturing or mining companies at least fifty per cent of whose outstanding capital is invested in business in the state. If the latter have less than fifty per cent of their capital so invested, they pay the tax on capital stock mentioned below, but may deduct the assessed value of the property so used in manufacture or mining. Telegraph, telephone, cable, express, parlor car, gas, electric-light, insurance, oil and pipe-line companies, as we have seen above, are taxed under this law in a special manner, *i.e.* on receipts, premiums and dividends. All other companies included under the head "miscellaneous corporations," pay a yearly "license fee" or "franchise tax" of one-tenth of one per cent on the capital stock issued and outstanding up to three million dollars; one-twentieth of one per cent on the capital between three and five millions; and fifty dollars additional for each one million dollars capital in excess of five millions. This tax applies, except in the case of insurance companies, only to domestic corporations. But it is to be borne in mind that railroad companies are not included in this tax on miscellaneous corporations.

In Maryland, the "tax on incorporated institutions" dates in a certain sense from 1841, when all domestic corporations which declared dividends were required to return the stock owned by non-residents, and to pay the state general property tax thereon to the collector of the place where the

orporation or its chief office was situated. In 1842 this obligation was extended to stock owned by residents; and n 1847 the corporations were required to pay the tax whether r not they had earned dividends. The county tax was, moreover, still collected from the shareholder. Early in the seventies the system was slightly changed; in 1878 the present method was introduced, and the office of tax commissioner reated. This tax is levied on the capital stock, or, if there e none, on the property and assets of all corporations incororated or doing business in the state, and of all joint-stock ompanies doing business in the state, except steam railroads nd savings institutions, both of which are taxed separately. Deductions are made from this valuation for the assessed alue of real property (separately taxed), for the capital ivested in property which already pays taxes, for the nonaxable securities held, and, in the case of building associaions, for mortgages on taxable property. The corporations ay at the rate of the general property tax, on only so much f the stock as is owned by residents of the state. They are lso required to pay, under a law dating from 1847, the general roperty tax on all interest-bearing bonds, certificates, or evidences of debt, owned by residents, deducting the amount rom the interest due the bondholders. The corporation taxes n Maryland, therefore, have only a very limited scope.

In Kentucky, we find since 1892, in addition to the property tax, a franchise tax on all corporations or associations "having or exercising any special or exclusive privilege or ranchise not allowed to natural persons, or performing any ublic service." This would not include ordinary industrial ssociations.

In Illinois, all corporations except railroads (which are separately taxed), manufacturing, newspaper and stockholding companies are assessed on the excess of their capital stock and debt over and above the value of their tangible property. But the capital stock tax is regarded as a part of the general property tax, and figures among its receipts. It applies, moreover, only to domestic corporations, for

foreign corporations are taxable only on their tangible property in the state.

Finally, in a few other states, like Alabama, Georgia, Indiana, Kansas, Kentucky and North Carolina, corporations in general are taxed at the ordinary rate of the property tax on the value of the capital stock over and above the value of the realty and tangible personalty. This is, however, practically only a modification of the general property tax. In only a few of these states, like Indiana, where transportation and several other companies are taxed in a special way, as described in the preceding pages, is provision made for the taxation of the franchise. In Alabama, there is a tax dating from 1866 on the dividends of all corporations doing business in the state; but since the dividends are simply classed as personal property, the tax yields almost nothing. There was formerly also a tax on the incomes of corporations, but this seems to have been rarely assessed and was abolished in 1884.

It may also be mentioned that Virginia had a general corporation tax for a short period. In 1843 a tax of two and a half per cent was imposed on the dividends of all corporations, except as to the stock held outside of the state, but in 1846 the tax was reduced, and was then allowed to disappear. During the Civil War, again, a tax was imposed on steamboat companies and "companies of a similar character." The law defined capital as stock subscribed, money deposited, bonds, certificates and other evidences of debt, so that the tax was thus really laid on stock plus total indebtedness.

We see then that only in Pennsylvania and in New York are there general corporation taxes applicable to practically all foreign as well as to domestic corporations. In Maryland the corporation tax, although nominally applicable to foreign, is in reality levied almost exclusively on domestic companies. In the other cases, the law applies in terms only to domestic corporations, except that in Kentucky it includes certain classes of domestic and foreign corporations.

In Maryland and Massachusetts again, the tax is really a general property tax on shares of stock, although paid by the corporation. Maryland and Pennsylvania are the only states which levy taxes on corporate bonds, although virtually only on the bonds of domestic corporations in the hands of residents. Finally, only in Pennsylvania is the corporation tax in lieu of local taxation; and, on the other hand, only in Kentucky is the corporation tax payable to local bodies also, in addition to the state corporation tax and to the state and local property taxes. The important questions that have arisen in connection with these points will be discussed below.

A mistake often made is that of confounding with the corporation tax what may be called the *tax on corporate charters*. This is in reality a license fee charged for the privilege of incorporation or of increasing the capital stock of a company, and it is generally either a fixed lump sum, or a percentage of the amount of the capital stock. It is found in sixteen commonwealths, most of which already possess a corporation tax proper. In Alabama and in Illinois, it is called "license fees." In Connecticut, it applies only to foreign corporations seeking a charter in the state, and is termed the "tax on corporate franchise," although quite unlike the franchise taxes in other commonwealths; in Kentucky, it is called the "tax on organization"; in Maine, the "tax on new corporations"; in Maryland, "bonus on stock"; in Missouri, the "corporation tax" or the "tax on corporations incorporating"; in New Hampshire, "charter fees"; in New Jersey, the "tax on certificates of incorporation"; in New York, the "organization of corporations tax"; in Ohio, "organization fee"; in Pennsylvania and Rhode Island, "bonus on charters"; in Texas, "franchise tax" in Vermont, "corporation license tax"; in West Virginia, where it is paid annually, "license tax on charters and certificates of corporations." In some of these cases, like Kentucky, New York and Pennsylvania, the tax is payable also on a subsequent increase of capital stock. In a few states,

like Texas, it is levied on foreign as well as on domestic corporations; while in Connecticut, it is levied only on foreign corporations. Finally, some states follow the New York plan and impose the tax also on joint-stock companies.

These taxes have really nothing in common with the corporation taxes properly so called. In Pennsylvania and Ohio, for instance, it is held to be not a tax at all, but a price paid for the chartered privilege. The distinction between the tax on corporate charters and the corporation tax proper can, perhaps, best be expressed by saying that if the latter is a tax on the right to be, the former is a tax on the right to become.

III. *Bases of the Tax.*

The summary just presented shows the chaos of principle in which the whole subject is involved. An analysis of the facts discloses no less than thirteen important methods of taxing corporations, not counting the various combinations of method which are practised in some states.[1] The bases on which the taxes are assessed are as follows: —

[1] The practical importance of the tax is shown by the figures of its yield in 1894, even though, owing to the financial depression, the revenues were considerably less, especially in New York, than in the preceding year. In the following table the yield of the property tax is included, for sake of comparison.

Pennsylvania:		
Tax on personal property		$2,386,750
" " corporation stock	$3,635,624	
" " gross receipts	775,830	
" " banks	535,142	
" " net earnings	78,086	
" " foreign insurance companies	495,758	
" " gross premiums	55,815	
" " corporation loans	1,188,912	
Bonus on charters	215,248	6,780,415
New York:		
Tax on property		$6,018,170
" " corporations	$1,645,879	
Organization tax	150,761	1,796,641

1. *Value of the property, i.e.*, the realty plus the visible and invisible personalty. This was originally the universal method and it is still the practice in the great majority of cases.

2. *Cost of the property.* This was the general rule in New Jersey from 1873 to 1876 as to all railroad companies, and is still the rule in isolated cases, as in New York in the local taxation of telegraph companies.

3. *Capital stock at par value.* This is true of the general corporation law in New Jersey, of mining companies in Massachusetts, and of banks and savings institutions in Pennsylvania.

4. *Capital stock at market value.* This is true of the general corporation law in Massachusetts and New York when applied to corporations where the dividends are less than six per cent. It was true of railroads in Connecticut between 1849 and 1864. It is also the custom in local taxation in many states.

5. *Capital stock plus bonded debt at market value.* This is true of all corporations in Pennsylvania and in Maryland (with certain restrictions), and of railroads in Georgia and in Illinois. In the case of railroads in New Jersey and of other corporations in Illinois, only the surplus of this valuation over the value of the tangible property is made the basis of the tax. In Maryland only the surplus over the value of the real estate is taxable as capital stock.

Massachusetts:		
Property tax		$2,010,945
Corporation taxes		6,218,000
New Jersey:		
Tax on property		$2,026,110
" " railroad corporations	$1,096,850	
" " miscellaneous "	670,849	
Local tax on railroads	391,208	2,158,907
Vermont (1893):		
Property tax		$264,097
Corporation tax		343,090
Maryland (1893):		
Corporation tax		340,490

6. *Capital stock plus total debt, both funded and floating.* This is true of railroads in Connecticut, and it was true of steamboat companies and of similar corporations in Virginia during the Civil War.

7. *Bonded debt or loans.* This was true of railroads and canals in Virginia from 1872 to 1874, and is now true of all corporations in Maryland and in Pennsylvania. In all these cases, however, it is only supplementary to the tax on capital stock. This tax is urgently recommended by the comptroller of New York.

8. *Business transacted.* This is true in several states of savings banks taxed on their deposits; in New York of foreign banks; in New Hampshire and Vermont of trust companies taxed on deposits; in Connecticut and Massachusetts of insurance companies taxed on the amount insured; in Connecticut and Georgia of telephone companies taxed on the number of telephone transmitters; in Georgia and Iowa of sleeping-car companies taxed according to the number and mileage of cars; in Delaware of railroads taxed on the number of locomotives and passengers; in Michigan of mining and smelting companies taxed on tonnage. It was also true in Pennsylvania from 1868 to 1874 of railroads; from 1868 to 1881, of coal companies taxed on tonnage; and from 1870 to 1889 of boom companies taxed on the number of logs rafted.

9. *Gross earnings.* This is true in many states of insurance companies taxed on gross premiums, and of transportation and other companies taxed on gross receipts.

10. *Dividends.* This is true of gas and electric-light companies in New Jersey, of turnpike companies in Kentucky, and of corporations in general in Alabama. It was formerly true of banks and iron companies in Pennsylvania, and of banks and insurance companies in Ohio and Virginia.

11. *Capital stock according to dividends.* This is true in New York of all corporations, when the dividends are at least six per cent. It was formerly true of banks in North Carolina and of all corporations in Pennsylvania.

12. *Net earnings.* This is true of railroads in Delaware and Virginia; of insurance companies in Alabama, Indiana, Maine and Nebraska; of foreign insurance companies in Illinois, Missouri, and New Jersey; of express and sleeping car companies in Virginia; of mining companies in Massachusetts; of savings banks without capital stock in Pennsylvania; and of gas-works, waterworks, electric-light companies, ferries, toll-bridges, public mills and gins, and cotton compresses in Alabama.

13. *Franchise.* This is true of a large number of cases; but the term *franchise*, as we shall see, denotes nothing definite, and the value of the franchise is measured by each one of the preceding twelve tests except that of property.

From this survey of the existing confusion, it is plain that we are still groping in the dark and that no one method has yet preëminently commended itself to the American sense of justice and expediency. In the next chapter we shall learn the judicial interpretation put upon these various methods, and shall attempt to analyze the situation from the economic point of view. That some change is imperative seems evident; precisely what the change should be can be ascertained only after careful consideration. It is a complicated problem that confronts us.

CHAPTER VII.

THE TAXATION OF CORPORATIONS.

II.

THE PRINCIPLES.

IN the preceding chapter we traced the history and actual condition of the corporation tax in the United States. The whole subject was shown to be involved in almost inextricable confusion, amid which, however, some thirteen different bases for levying the tax might be distinguished. These, it will be remembered, were the value of the property, capital stock at par value, capital stock at market value, capital stock plus bonded debt, capital stock plus total debt, loans, business, gross earnings, dividends, capital stock according to dividends, net earnings and franchise. In the attempt to analyze these methods it may be well to begin with the last, on account of its obscurity as well as of its importance.

I. *The Franchise Tax.*

At the outset we are confronted by the question: what is a franchise? The matter has been brought squarely before the public by the provisions of the California constitution of 1879, and since then by tax laws of several states which prescribe that franchises of corporations shall be separately assessed. Before we can discuss the franchise tax, however, we must attempt to ascertain what a franchise really is.

Blackstone defines a franchise as "a royal privilege or branch of the King's prerogative subsisting in the hands of a subject." But his definition is too vague for our pur-

poses. The Supreme Court of the United States has given this definition: —

A franchise is a right, privilege or power of public concern which ought not to be exercised by private individuals at their mere will and pleasure, but which should be reserved for public control and administration, either by the government directly or by public agents acting under such conditions and regulations as the government may impose in the public interest and for the public security.[1]

This definition, however, is somewhat too narrow, since it emphasizes unduly the element of public control and public interest. These are indeed very desirable adjuncts, but they scarcely seem to be indispensable parts of the conception. Nothing is more common than the possession by a purely private corporation of a franchise — for example, the mere privilege to act as a corporation. Furthermore, a privilege of a public character, like that possessed by a railway, is not necessarily confined to corporations. Thus, there is nothing to prevent the grant of the right of eminent domain to private persons. We therefore conclude that a franchise in the wider sense is simply a right conferred by government of conducting an occupation either in a particular way or accompanied with particular privileges. The motive may be either public welfare or public revenue. This can be clearly seen by tracing the historical development of the franchise.

One of the chief sources of royal income in mediæval Europe consisted in the so-called "fines for licenses, concessions, and franchises." These were payments by individuals or associations for all kinds of special privileges, such as to secure the general favor of the crown, to retain or to quit office, to obtain the right of exporting commodities, to conduct some business in a particular way, to obtain special jurisdictional privileges, to possess the right of *firma burgi*, and so on.[2]

[1] California *vs.* Southern Pacific R. R. Co., 127 U. S. 40.

[2] A characteristic example of a fine or franchise hard to classify is this: The wife of Hugo de Neville paid the king two hundred hens "eo quod possit jacere una nocte cum domino suo" (who happened to be in prison). *Rotuli Finium*, 6; quoted in Madox, *History of the Exchequer*, i., p. 471.

A most common instance can be found in the trading privileges of the guilds, granted chiefly for the sake of the accruing emoluments. Similar to these mediæval concessions are the modern licenses, especially in the Southern commonwealths, which are conferred on individuals and corporations alike, and in most cases for purely fiscal reasons. What are called franchise taxes elsewhere are known in the South simply as privilege or occupation taxes. A franchise of an individual or of a corporation is, therefore, simply a privilege — something over and above the value of the property, and in a measure analogous to the "good will" of a firm. It is the indefinite something which gives vitality to the enterprise and makes its business worth having.

In the case of a corporation this indefinite something is the privilege that individuals possess to act as one, with legal individuality and immortality, and with divisible share capital. This is a privilege which corporations share equally with joint-stock companies; accordingly, the corporation tax is frequently made applicable also to such associations. A modern stock-corporation indeed possesses another privilege, which is exclusive to it, namely, limited liability. The corporate franchise therefore is really the privilege of juristic personality and limited liability; it is the right to exist as a corporation.[1] Since it is something separate and apart from the property of the corporation, it is capable of being taxed.[2]

What has been said applies, however, only to domestic corporations. In the case of a foreign corporation, the state which has not given the franchise cannot tax it. With a domestic corporation the franchise or right to exist is an

[1] "By the term *corporate franchise* we understand is meant the right or privilege given by the state to two or more persons of being a corporation, that is, of doing business in a corporate capacity." Home Insurance Co. *vs.* State of New York, 134 U. S. 594. *Cf.* Western Union Telegraph Co. *vs.* Mayer, 28 Ohio State 521.

[2] "Nothing is better settled than that the franchise of a private corporation . . . is property and of the most valuable kind, as it cannot be taken for public use without compensation." Wilmington R. R. Co. *vs.* Reed, 13 Wall. 264, 268.

empty right, if the corporation may not transact business; the right to exist is therefore inextricably bound up with the right to carry on the business. But as regards a foreign corporation, the two things are distinct, and the state can tax only the privilege of carrying on the business within its borders. The corporate franchise has no existence apart from the laws of the state which created it. In order to avoid trouble, therefore, the corporation tax is usually imposed on "the corporate franchise or business;" and the New York tax has been upheld as applicable to foreign corporations as a tax on their business, not on their franchise.[1]

The denial of the right to tax the franchises of foreign corporations applies equally to corporations chartered by the United States which are not legally foreign corporations.[2] Even national banks cannot be subjected to license or privilege taxes.[3] Some recent cases in Pennsylvania have even held that the tax on capital stock is invalid as to stock invested in a patent right, because such taxation involves a property right which depends for its existence exclusively on the federal constitution and on an act of Congress.[4] This seems to be an extreme application of the general principle, which, if persisted in, will have important economic results. It will render a great part of our corporation tax laws practically nugatory. For almost every corporation utilizes something covered by a patent; and if it is held that the capital stock represents in whole or in part this patented property, the corporation would to that extent escape taxation.

Subject to these qualifications and to the principle, to be discussed below, that no commonwealth may impose a fran-

[1] People *vs.* Equitable Trust Co. of New London, Conn., 96 N. Y. 396.

[2] California *vs.* Southern Pacific R. R. Co., 127 U. S. 40. See Cal. Code, sec. 3665, amended March, 1891.

[3] Mayor *vs.* National Bank of Macon, 59 Ga. 648; City of Carthage *vs.* Bank of Carthage, 71 Mo. 508; National Bank of Chattanooga *vs.* Mayor, 8 Heiskell 814.

[4] Commonwealth *vs.* Westinghouse Co., 151 Pa. State 265; Commonwealth *vs.* Air Brake Co., *id.* 265; Commonwealth *vs.* Philadelphia Co., 157 Pa. 527; Commonwealth *vs.* Lehigh C. and I. Co., 162 Pa. 603.

chise tax to interfere with interstate commerce, the taxation of corporate franchise has no limitation, except the discretion of the taxing power.[1]

Greater difficulties arise when an attempt is made to measure the franchise of a corporation. We have seen that there are not less than thirteen separate methods of taxing corporations and that each of these methods, with one exception, is declared to involve a franchise tax. There are yet other methods of measuring franchise, such as the value of the capital stock less the value of the property, the value of the stock less the value of the tangible property, the value of the stock less the value of the realty, the value of the stock and bonds less each or all of these items, *etc.* There is a total lack of uniformity. Each commonwealth measures the franchises of its corporations in its own way; and frequently a given commonwealth measures the franchises of different corporations in entirely different ways. There is an utter absence of any common standard of measurement. Capital stock, stock minus property, stock minus realty, bonded debt, business, gross earnings, dividends, profits, *etc.*, are each declared to be the value of the franchise. The result is hopeless confusion. It would be useless to examine the methods of all the states; a single example — that of New Jersey — will suffice.

The state board of assessors of New Jersey have published since 1884 several bulky volumes in which they discuss the details of corporate assessment. In the case of railroads they have adopted the following plan.[2] The market value of the stock is added to the market value of the debt; from this aggregate the total value of the tangible corporate property is deducted, and the remainder is declared to be the "adventitious value of the entire road, its privileges included." Sixty per cent of this is taken as the value of

[1] Delaware Railroad Tax Case, 18 Wall. 231; California *vs.* Southern Pacific R. R. Co., 127 U. S. 41.

[2] *Report of the State Board of Assessors of New Jersey*, 1884, p. 26; 1885, p. 11; 1886, p. 28; 1888, p. 6.

the franchise, to which is added the value of the real and tangible property, known as the "abstract value" of the road, making a total which is termed the entire value of the railway for purposes of taxation. This, however, is not all; for if the value of the tangible property exceeds the value of the stock and debt, the board declares the franchise to be twenty per cent of the gross earnings. It will be readily perceived that this measurement of a franchise, which may give a result less than nothing, is rather awkward. Indeed, the courts of New Jersey have overturned this portion of the assessors' standard by pronouncing the estimate based on gross earnings unconstitutional;[1] but the main element in the method of valuation was upheld on the easy-going principle that no substantial injustice was done. It is this absence of "substantial injustice" to which is due the chaotic condition of franchise taxation in this country to-day.

In Illinois and in California, the method of taxing franchises is similar to that of New Jersey. In Illinois, the board of equalization adds the cash value of the stock to that of the debt (excluding current debt), and declares the result to be the fair cash value of the capital stock including the franchise. From this the board deducts the equalized value of all the tangible property, and declares the remainder to be the value of the capital stock and franchise subject to taxation. This method was upheld by the Supreme Court of the United States as being "probably as fair as any other."[2] In California, the value of the franchise is determined by subtracting from the actual value of the capital stock the value of all the items of property.[3] In Kentucky, the assessors deduct from the amount of the capital stock the assessed value of all tangible property taxed in the state, and declare

[1] Case of Railroad Tax Law, N. J. Court of Errors and Appeals, decided May 29, 1886. The case may be found in full in the *Third Annual Report of the State Board of Assessors*, 1886, pp. 79–173.

[2] State Railroad Tax Cases, 2 Otto 575. *Cf.* Railway *vs.* Backus, 154 U. S. 421.

[3] Approved in Spring Valley Water Works *vs.* Schottler, 62 Cal. 69, 118; Burke *vs.* Badlam, 57 Cal. 594; San José County *vs.* January, 57 Cal. 614.

the remainder to be the value of the franchise. In the case of foreign companies, however, they take that proportion of the capital that the gross receipts in the state bear to the total gross receipts, and then deduct the value of the tangible property assessed in the state. In the case of transportation companies they take only that proportion of the capital stock which the length of the line within the state bears to the total length.[1] In Indiana, if the full value of the franchise is represented by the capital stock, the franchise is taxed; but when the franchise is of greater value than the capital stock, then it is provided that the franchise "shall be assessed at its full cash value," and the capital stock shall not be taxed.[2] In the other states the determination of the franchise is generally fixed by statute, but the variety of methods is very great.

The meaning of "franchise tax" is thus something wholly indefinite. What is called a franchise tax in one state may be absolutely unlike that in the adjoining state. The only course open for us, therefore, is to discuss the principles underlying corporate taxation, regardless of the technical phraseology. Before proceeding to this discussion, however, there still remain a few points for examination.

What is the real significance of the franchise tax? Why is it desirable that such a hard and fast line should be drawn between the property tax and the franchise tax? What is the meaning of the distinction?

The answer is very plain. In the first place, according to the constitutions of several of the states, the taxes on property must be uniform. If, however, the corporation tax is held to be a franchise tax, there is no necessity of such uniformity between the tax on individuals and that on corporations. Secondly, according to the principles of the property tax, deductions are allowed for certain classes of exempt or extra-territorial property. If the tax is a franchise tax, such exemptions cannot be claimed. Thirdly, if the tax is a franchise tax, and not a tax on property or

[1] Ky. Laws of 1892, chap. 102, art. iii., § 3.

[2] Ind. Law of Mar. 6, 1891, § 74.

earnings, it may be upheld as not interfering with interstate commerce. Finally, if the tax is a franchise tax, many of the objections to double taxation would be removed, as we shall see later on. Every commonwealth imposing a franchise tax, for instance, could assess the entire capital of a corporation, although only a very small portion might be located or employed within the state. We can hence readily understand the persistence with which the corporations seek to uphold the distinction and to have the charge declared to be not a franchise, but a property, tax.

The question has arisen almost exclusively in connection with the taxation of deposits, capital stock or earnings. In the case of deposits of savings banks the decisions are almost uniform that the tax is one on the franchise and not on the property; [1] among the few commonwealths that tax such deposits, Connecticut, Maine, Maryland and Massachusetts accept this view. Moreover, since there is no necessary relation between the amount of the deposits and the extent of the property, the tax is valid even if the deposits are invested in United States securities. Only one commonwealth, New Hampshire, has held out against the general tendency and pronounced the tax on deposits to be a property tax.[2]

In the case of capital stock the matter is more complicated and the decisions are more divergent. That capital stock is in one sense property will of course be denied by no one; but whether the tax on capital stock is tantamount to a tax on general property is an entirely different question. In several commonwealths it has been held that capital stock practically represents the property, and that the two are to all intents and purposes interchangeable terms.[3]

[1] Maryland *vs.* Central Savings Bank, 72 Md. 92; Coite *vs.* Society for Savings, 32 Conn. 173, affirmed in 6 Wall. 594; Provident Institution *vs.* Massachusetts, 8 Wall. 611. See also Commonwealth *vs.* Savings Bank, 123 Mass. 493; Jones *vs.* Savings Bank, 66 Me. 242.

[2] Bartlett *vs.* Carter, 59 N. H. 105.

[3] Jones *vs.* Davis, 3 Ohio 474; Burke *vs.* Badlam, 57 Cal. 594; New Orleans *vs.* Canal Co., 29 La. A. R. 851; Whitney *vs.* Madison, 23 Ind. 331; County Commissioners *vs.* National Bank, 48 Md. 117.

As regards the tax on capital stock in general, other commonwealths, however, have decided, and the federal courts have affirmed the decision, that it is not a tax on the property. Thus, it has been held that the Delaware railroad tax of one-quarter of one per cent on the actual cash value of the capital stock is a tax not on the property or on the shares of individuals, but on the corporation, measured by a certain percentage on the value of its shares.[1] In like manner the Massachusetts taxes on the whole value of the corporate shares and on the capital stock in excess of the value of the real estate and machinery have been pronounced taxes on the franchise.[2] In a recent case it has been held that this tax, although nominally upon the shares of capital stock, is in effect a tax upon the organization on account of property owned or used by it, and therefore valid. It is an excise tax, not a property tax, and therefore not limited by the constitutional restrictions as to the uniform taxation of all property.[3] On the other hand the Connecticut courts have held that the tax on capital stock and debt is not a tax on franchise, but on property;[4] and the older cases in Alabama and Missouri were similarly decided.[5]

Secondly, in the case of capital stock as measured by dividends, the courts of Pennsylvania and New York have arrived at diametrically opposite conclusions. In Pennsylvania a long series of cases has consistently maintained the doctrine that the tax is one on property.[6] The court has endeavored to lay down this rule: —

[1] The Delaware Railroad Tax Case, 18 Wall. 206.

[2] Hamilton Co. *vs.* Massachusetts, 6 Wall. 632; Commonwealth *vs.* Hamilton Manufacturing Co., 94 Mass. 298; Manufacturers' Insurance Co. *vs.* Loud, 99 Mass. 146; Portland Bank *vs.* Apthorp, 12 Mass. 252 (1815), the basis of all subsequent decisions.

[3] Western Union Telegraph Co. *vs.* Massachusetts, 125 U. S. 530.

[4] Nichols *vs.* Railroad Co., 42 Conn. 103.

[5] State *vs.* Insurance Co., 89 Ala. 335; State *vs.* Railway Co., 37 Mo. 265.

[6] Fox's Appeal, 112 Pa. 359; Commonwealth *vs.* Standard Oil Co., 101 Pa. 119; Phœnix Iron Co. *vs.* Commonwealth, 59 Pa. 104; Catawissa Appeal, 78 Pa. 59.

The test whether the tax in any given case is a franchise as distinguished from a property tax, would seem to be that a tax according to a valuation is a tax on property, whereas a tax imposed according to nominal value or measured by some standard of mere calculation — as contrasted with valuation — fixed by the law itself may be a franchise tax.[1]

The New York and New Jersey courts, on the other hand, have held the tax on capital stock to be a franchise tax.[2] The New York case was carried in last instance to the federal court. Of course the fact that the statutes of Massachusetts and New York expressly declared the tax to be a franchise tax, was of no weight; for it was justly contended that no importance should attach to mere nomenclature. But the United States Supreme Court had already shown the tendency of its thought in the Massachusetts and Delaware decisions just cited. In a subsequent case, the court said, although indeed *obiter*, that the New York tax was "a franchise tax in the nature of an income tax."[3] Finally, in a later case, the tax was definitely pronounced to be on franchise, the court holding that the tax was not upon the capital stock nor upon any bonds of the United States composing a part of that stock; but that reference was made to the capital stock and dividends only for the purpose of determining the amount of the tax to be exacted each year.[4]

This decision may be defended on economic as well as on legal grounds. It may be granted, and in fact it is difficult to dispute the contention, that the tax is in one sense a tax on capital stock. Nevertheless, it does not follow that the tax is a property tax; for from the economic point of view capital stock is not necessarily identical with the property of a corporation. In the first place there is the question of the market or par value

[1] 101 Pa. 127.

[2] People *vs.* Home Insurance Co., 92 N. Y. 328; Singer Co. *vs.* Heppenheimer, 25 Vroom 439.

[3] Or, as it was said in another place, "a tax upon its franchise based upon its income." Mercantile Bank *vs.* New York, 121 U. S. 158, 160.

[4] Home Insurance Co. *vs.* State of New York, 134 U. S. 594.

of the stock. Some of the commonwealths, as we know, tax corporations on the amount, *i.e.* the par value, of the capital stock. Yet manifestly, where the market value of the stock may be double or half the par value, it cannot be maintained that the latter is identical with, or an index to, the value of the property. In no sense, therefore, can capital stock at its par value be declared equivalent to the whole property. Even if we take the market value of the stock, we are not in a much better position, for many of our corporations, especially railroads, are created from the proceeds of the bonds. In such cases, although the property may be great, the profits are devoted mainly to meeting the interest on the bonded debt, and since there may be no dividends, the value of the stock may be very slight. Yet the property which produces these profits may be enormous. Evidently the capital stock and the whole property are not identical. But we may go still farther. Even in the case of corporations without a bonded debt, but whose property does not pay good dividends, the capital stock at its market value is no index of the value of the property. Thus, a model-dwellings company may have property worth a million dollars; yet if it is so managed as to pay no dividends, the stock will sell in the market for a very small sum. The value of this depreciated stock is evidently not the same as that of the company's real property. They are not interchangeable terms. Hence, from whatever point of view we regard it, capital stock is not identical, economically speaking, with the total corporate property; a tax on capital stock is not a tax on the entire property.

The courts of New Jersey, New York and the United States are then perfectly right in their decisions; and the Pennsylvania cases seem to be incorrect both in law and in economics.

The third case in which the question of a franchise tax is of importance is in connection with the subject of interstate commerce. The growth of the interpretation put upon the principle that no state may levy a tax interfering with interstate commerce will be more fully discussed here-

after.[1] It may be stated here, however, that in a large number of cases it has been held that a tax on the franchise of a domestic corporation is perfectly valid even though the value of the franchise is measured by the gross receipts, a part of which are derived from interstate commerce.[2] Were the tax not a franchise tax, it would be invalid as a tax on interstate business.

It will be seen from the above review that the entire treatment of a franchise tax is based largely on a legal fiction. The conception is legal, not economic. It was devised by the legislatures and extended by the courts in order to evade the evil results of the general property tax.[3] It is remarkable that in the state of New York, where the commonwealth tax on capital stock is held to be a franchise tax, the local tax on capital stock, which is levied in almost the identical way, is held to be a property tax. In the local tax a deduction must be allowed for any non-taxable property in which the capital may be invested; in the state tax no such deduction is permitted.[4] Such a distinction is economically incorrect. Except in so far as corporations may be made to pay for their charters, there is no reason why they should be put on a different footing from joint-stock companies or other associations. The ability of an association to pay — its earning power — is not changed a whit by the simple fact of incorporation. The

[1] *Infra*, pp. 206–212.

[2] State Tax on Railway Gross Receipts, 15 Wall. 284; Maine *vs.* Grand Trunk R. R. Co., 142 U. S. 217; People *vs.* Wemple, 117 N. Y. 136, and other cases cited below.

[3] This is apparent from the New York law of 1866, chap. 761, which declared the privileges and franchises of savings banks to be personal property, and taxable to an amount not exceeding the gross sum of the surplus earned. In Monroe County Savings Bank *vs.* City of Rochester, 37 N. Y. 365, the law was upheld, although the bank had a portion of its property invested in United States bonds. The court held that since the tax was upon franchise it was unimportant in what manner the property of the corporation was invested. "The reference to property is made only to ascertain the value of the thing assessed."

[4] People *vs.* Barker, 139 N. Y. 55; People *vs.* Commissioners, 72 Hun 126; People *vs.* Coleman, 126 N. Y. 433.

privilege of limited liability, however important it may be to the individual stockholders, and however great the amount that may be demanded for the privilege as a condition precedent to organization, does not alter the taxable capacity of the association after it has once become a corporation. If the corporate franchise, in the sense of the privilege of being a corporation, itself constituted the only justification of a tax, how would it then be possible to tax unincorporated companies in the same way? And yet to exempt the latter would clearly constitute a glaring economic inequality.

The value of the franchise from the economic point of view consists in the earning capacity of the corporation. That is the real basis of all taxation and can best be gauged by the amount of business done. It will be remembered that the court says: "Whether the tax upon a domestic corporation be called a tax upon franchise or upon business is wholly unimportant."[1] We may go farther and say that from the economic standpoint it is wholly immaterial whether the tax upon any corporation be called a tax on franchise or a tax on business. In an economic sense the franchise tax means nothing at all. It is so utterly indefinite that it defies exact analysis. However valuable it may be to the lawyer in the effort to evade certain constitutional restrictions, to the student of the science of finance it is a useless conception.

II. *Economic Theory.*

Let us therefore leave the domain of these legal quibbles and attempt to analyze the economic principles underlying the taxes actually in vogue, irrespective of the question whether they are called franchise taxes. It will be best to take them up in the order mentioned above.[2]

First, *the general property tax*, or the taxation of the corporate realty plus its visible and invisible personalty at its actual value. It will not be necessary to show the inadequacy of this primitive plan; all the actual reforms are moving away from it. We have seen in a previous chapter

[1] 96 N. Y. 396.

[2] *Supra*, pp. 177–179.

that the standard of taxation is ability to pay, and that this ability is no longer proportional to the general mass of property. The general property tax is to-day antiquated. When as a state tax it is levied by the local assessors, it becomes especially unjust; and even when assessed by a separate state board it is inexact, and exhibits all the defects of the general property tax on individuals. We may conclude, therefore, with the railroad tax commission of 1879, that as a system it is open to almost every conceivable objection.[1]

The cost of the property, as a basis for taxation, is even less defensible than the value of the property. For no one would assert that the original cost of corporate property bears any necessary relation to the present value, much less to its present earning capacity. This method is so obviously unjust as to deserve no further mention.

The capital stock at its market value. This plan is open to several vital objections. The idea is that the market value of the stock will be practically equivalent to the value of the property, or, as it is put by some of our state courts, that the entire property of a corporation is identical with its stock. As has already been observed, heavily bonded corporations would in this way entirely escape taxation; because in such cases—and they are the great majority—the capital stock alone would not represent the value of the property. Secondly, even in the case of corporations without any bonded debt, the tax is unjust, because it does not necessarily bear any relation to the earning capacity. If a company without bonded debt pays dividends, the value of the stock is indeed a fair index to earning capacity; its value would represent the capitalized earnings. But if there are no dividends, the value of the capital stock is wholly uncertain and largely speculative, depending on the manipulations of the stock exchange. It frequently happens that non-dividend-paying stock fluctuates in value from thirty to fifty per cent within one year. A standard of taxation which

[1] *Taxation of Railroads and Railroad Securities*, by C. F. Adams, W. B. Williams and J. H. Oberly (1880), p. 8.

in such large classes of cases bears no proportion to the earning capacity or productiveness of the property clearly cannot be successfully defended. We can again agree with the railroad tax commission in their conclusion that the tax on the value of the capital stock is "clumsy and devoid of scientific merit," that it "would admit of evasions in a most obvious way," and that "it is impossible of any general application." [1]

The New York statute which governs the taxation of corporations for local purposes requires the capital stock to be assessed "at its actual value in cash." In determining the "actual" value, the assessors may take "book value," *i.e.* a value obtained by estimating the assets separately and deducting from the aggregate the total amount of the liabilities, actual or contingent.[2] The latter method is employed when the market value of the stock is fictitious or artificially inflated, but in principle is open to precisely the same criticism as the other method. In fact, the objections are rather stronger; for, whereas in the case of the tax on capital stock according to market value the bonded indebtedness is not taxed at all, in this case the bonded indebtedness is actually deducted. Under the New York law it has been recently decided that "capital stock" does not necessarily mean share stock, but the capital owned, the fund required to be paid in and kept intact as the basis of the business enterprise. When the capital is undisclosed, the assessor may consider the market value of the shares as an aid in discovering the capital, but not as the thing to be valued and assessed.[3]

The capital stock at its par value. This method is open to all the objections of the preceding and to many more in addition. Moreover, it is peculiarly liable to evasion. For example, in New York it is a common practice for corporations to evade the organization tax by issuing a nominally

[1] Report, *etc.*, p. 7. *Cf.* the *Report on the Valuation and Taxation of Railroads*, to the Pennsylvania Tax Conference, 1894, written by Mr. Joseph D. Weeks.

[2] 107 N. Y. 541.

[3] People *vs.* Coleman, 126 N. Y. 433, distinguishing many preceding cases. See also People *vs.* Commissioners, 72 Hun 126 (1894).

small capital, but selling it to the stockholders at a premium of several hundred per cent; the market value of the stock is thus at once many times the par value. The sole recommendation of this plan is the facility of fixing a basis for assessment; but this does not compensate for its obvious defects. The par value of stock is certainly no gauge either of the real worth of the property or of its earning capacity. This is perhaps the least defensible of all the methods.

The capital stock plus the bonded debt at the market value. The justification for adding to the value of the stock the value of what the company owes, in the shape of its funded debt, is the simple fact that the existence of this indebtedness makes the stock worth just so much less. The sum of the two elements is a far better index to the value of the property than the capital stock alone. This method is much preferable to any that has yet been discussed, because it prevents the exemption of heavily bonded companies; and yet it is not entirely free from objections. Owing to the complications of interstate polity, the proceeds of the tax, in all cases where the stock and bonds of a corporation are owned outside of the commonwealth, will accrue not to the state of the owner's residence, but to the state where the corporate property is situated. Secondly, when the tax is on bonds as well as on stock it will be inadequate, because applicable only to the bonds owned by residents of the state. If the tax is, however, levied not on the bonds, but on a valuation equal to the stock plus bonds, this objection may be obviated. Both these points will be discussed more fully below. Thirdly and principally, in all those cases where the corporation pays no dividends and its stock nevertheless possesses a speculative value, the tax, for the reasons adduced above, will not necessarily bear any relation to the earning capacity of the company. In short, while this method is far better than the taxation of capital stock, it does not avoid all the objections that have been urged against the latter.

There remain thus only the taxes on earnings, on business, on dividends and on profits.

The gross earnings. This tax was the one recommended by the railroad tax commission. It possesses many undeniable advantages. It is certain, easily ascertained and not susceptible of evasion. But it has one fatal defect; — it is not proportional to the real earning capacity, it takes no account of the original cost, nor does it pay any regard to the current expenses, which may be necessary and just. For example, when the cost of building a railroad is great, its gross earnings must be correspondingly large in order to enable its owners to realize any fair return on the investment. A tax on gross earnings does not recognize this distinction. It discriminates unfairly between companies, and makes a line built at great expense and with great risk pay a penalty for the enterprise of its constructors. Again, a gross earnings tax takes no account of expenses. Of two corporations which have equally large gross receipts, one may be in a naturally disadvantageous position which unduly increases the cost of operation or management. Clearly its ability to pay is not so great as that of its rival in possession of natural advantages. In short, the gross receipts tax is like the old tithe, the most primitive of all land taxes.

These defects in the proportional earnings tax are so apparent that several commonwealths, as we know, have introduced, in the case of railroads at least, the graded gross earnings tax, the rate per cent increasing with the earnings. But this system removes the objection only in part, for the graduation takes place only up to a certain point. Above all, there is no guarantee that the increase of net receipts will correspond to the increase of the gross receipts. There is no necessary connection between them. A corporation with gross receipts of five thousand dollars per mile may have actually less net receipts than one with four thousand dollars per mile. In such a case a graded earnings tax would intensify the disadvantages of the first line and augment the injustice. To tax gross earnings is, therefore, essentially a slip-shod method.

The business transacted. This tax, while closely anal-

ogous to the gross earnings tax, does not possess all its advantages. The business may be large but not lucrative. An extensive business does not mean even proportionally extensive gross earnings. The business transacted is an exceedingly rough way of ascertaining the prosperity of a corporation. It affords no accurate test of profits, and fails to take account of the personal equation which may make all the difference between good and bad management. Clearly, the tax on business is but a clumsy device.

The dividends or *the capital stock according to dividends.* Economically speaking these taxes are the same; but from the legal point of view, at least according to the opinion of the Supreme Court, there is a decided difference. The distinction is brought out in connection with the subject of extraterritoriality, and will be fully discussed below. We are here dealing only with the economic problem.

The dividends tax, it may be said, is good so far as it goes; but it does not go far enough. It is indeed true that some of the objections are slight. Thus it has been contended that this tax fails to reach the profits which are not divided but which are simply put into a reserve fund; and some commonwealths have even sought to obviate the supposed difficulty by providing that the tax should apply to the dividends, whether declared or merely earned and not divided. This objection, however, is not of great importance; for even if the undivided earnings are not taxed, they go into the reserve or surplus fund; and as this increases the corporate capital, it must in the long run lead to increased earnings on the larger capital. Since the surplus cannot be increased indefinitely, it will ultimately find its way to the shareholders as dividends, and thus become liable to the tax.

Another objection which might be urged is that a corporation may devote a portion of its earnings to new construction or to new equipment. This expense may be defrayed out of profits, instead of from the capital or construction fund. The dividends in such a case, it might be said, do not represent the actual earning capacity of the enter-

prise. While this is true temporarily, the improvements made by the corporation necessarily enhance the value of the property and ultimately lead to increased dividends, so that in the long run a tax on dividends would still reach the corporation.

The real objection to the dividends tax is of quite a different character. It is utterly inadequate when applied to those corporations which have bonded indebtedness. Thus one corporation having no bonds may earn enough to pay dividends of five per cent on its stock, while another, with the same earnings, may have devoted half to the payment of interest on bonds, and only half to the payment of dividends. A tax on dividends, while nominally just, would be actually most unjust, for one corporation would pay just twice as much as the other. The objection has been recognized in American legislation, but only once. The United States internal revenue law of 1864 provided for a five per cent tax (raised from three per cent in 1862), which, in the case of railroads, canals, turnpike, navigation and slackwater companies, was imposed on all dividends, as well as on all coupons or on all interest, on evidences of indebtedness and on all profits carried to the account of any fund. In the case of those companies which were not presumed to have any bonded debt, like banks, trust companies, savings institutions and insurance companies, the tax was imposed only on dividends and surplus. The federal law, indeed, violated strict consistency in imposing a gross earnings tax also on transportation and on certain insurance companies; but the correct implication in the law was the inadequacy of a tax on dividends alone. In fact, the objections to the dividends tax are closely analogous to those which we found in the capital stock tax as compared with the tax on stock plus debt. Its great defect is that it reaches only a part of the corporate earning capacity.

We thus come finally to the tax on *net earnings*, or rather on net receipts, profits or income. This is the most logical form of corporate taxation. The tax is not, like the gross earnings tax, unequal in its operation. It holds out no

inducement, like the general property tax, to check improvements. It is just; it is simple; it is perfectly proportional to productive capacity. In short, it satisfies the requirements of a scientific system.

There are two possible objections to a tax on net receipts. One is that the accounts may be "cooked" by paying unduly large salaries to the officers; that is, the profits may be divided as nominal expenses, thereby leaving very insignificant net receipts or none at all. This objection, however, would not apply at all to the vast majority of corporations, whose stock or bonds are held by outside parties, who will not consent to see their dividends or interest curtailed by any practices of this nature. The danger can be real only in respect to the few corporations in which the stock is owned entirely by the managers. But these are chiefly manufacturing corporations, which, as we know, are usually exempted from the general corporation tax. Even here, however, the danger is not very great. We hear of no complaints on this score in the American commonwealths where the net receipts tax prevails; and in Europe, where this method of taxation is well-nigh universal, the objection has never been raised. It may thus be pronounced of little importance.

Secondly, it may be contended that the tax is impracticable in the case of great railroad corporations which, having leased lines in other states, are interested in so manipulating the traffic that the heavily mortgaged leased lines will earn little or nothing above fixed charges. Such cases are very common. The commonwealths in which such leased lines are situated will, it is argued, be robbed of the whole benefit of the tax; since the proceeds accrue to the state of the parent company. In reality, this objection arises simply from a quibble about words. Of course net receipts must be strictly defined. The logical basis of corporate taxation is the total annual revenue from all sources minus all actual expenditures except interest and taxes. The reason for not deducting fixed charges, *i.e.*

interest on the bonds, is the same as that which leads some of the states to levy the railroad tax on capital plus debt, and which made the federal government tax coupons as well as dividends. Both together represent earning capacity. Although the interest on the funded debt is known by the name of fixed charges, it is really part of the profits which, in the absence of funded debt, would go to the shareholders as dividends. It would obviously be suicidal so to frame the definition of net receipts as to exclude this interest on bonds. Net receipts of a corporation mean gross receipts minus actual current expenses. Any other definition would confuse the whole conception.

In several commonwealths some very dubious and arbitrary distinctions have been attempted. The Minnesota courts have held that "earnings" means only receipts from operation.[1] Under the New York law it has been held that "income" means gross income, and that "profits" means gross profits, not clear profits;[2] but this decision was owing to some peculiarities of the statutory phraseology. From the standpoint of the science of finance we understand by "income," net income, and by "profits," only net profits. So in Pennsylvania and Alabama it has been held that income, gains or net earnings means the whole product of the business, deducting nothing but expenses.[3] The Thurman law, indeed, which regulates the relations of the federal government to the Pacific railroads, defines net earnings in a different way, *viz.*, as the gross earnings, deducting "the necessary expenses actually paid within the year in operating the lines and keeping the same in a state of repair," and also deducting "the sums paid by them in discharge of interest on their first mortgage bonds," but "excluding all sums paid for interest on any

[1] State *vs.* Railroad Co., 30 Minn. 311.

[2] People *vs.* Supervisors of Niagara, 4 Hill. 20; People *vs.* Supervisors of New York, 18 Wend. 605.

[3] Commonwealth *vs.* Pa. Gas Coal Co., 62 Pa. 241 (1869); Board of Revenue *vs.* Gas Light Co., 64 Ala. 269. In the case of mines, "net proceeds" have been defined; Montana Code, § 1791.

other portion of their indebtedness."[1] The explanation of this arbitrary definition lies not in any economic principle but in a particular legislative provision whereby the first mortgage bonds are given precedence over the government liens. The Supreme Court has held that "net earnings" as here used exclude expenditures for new construction and new equipment.[2] The Interstate Commerce Commission makes a distinction between earnings and income, including in earnings only receipts from transportation, and designating as income the receipts from property owned but not operated. The aggregate it calls total earnings and income.[3] While this separation of earnings is correct, the nomenclature is on the whole confusing, since the term *income* should be reserved for the conception net profits. In Virginia the net income of corporations is ascertained by "deducting from gross receipts the costs of operation, repairs, and interest on indebtedness." So also by the federal law of 1894 the income tax was levied only on corporate dividends; but this, as we have seen, is economically incorrect. Interest on bonds should not be exempted.

If it be desired to obtain in the case of railroad companies a more exact definition of net receipts or income, the following would be a sound method of procedure: Gross receipts consist of all earnings from transportation of freight and passengers, receipts from bonds and stocks owned, rents of property and all miscellaneous receipts from ancillary business enterprises or otherwise. From these aggregate gross receipts we should deduct what are classified by the Interstate Commerce Commission as operating expenses, that is, expenses for conducting transportation, for maintenance of roadway, structures and equipment, and for general expenses of management. No deduction should be made for fixed charges, *i.e.* for taxes or for interest on the debt,

[1] Act of May 7, 1878, 45th Cong., 2d Sess., chap. 96, sec. 1.

[2] Union Pacific R. R. Co. *vs.* United States, 99 U. S. 419.

[3] *Report on the Statistics of Railways in the U. S. to the Interstate Commerce Commission*, 1889.

or for the amount used in new construction, in betterments, in investments, in new equipment, or for any of the expenditures that find their way into profit and loss account.

The method here suggested would lead to the abolition of one of the serious abuses of American railway management — that of putting all possible expenses into the construction account. The railways, for example, frequently fail to charge the maintenance and repair of their rolling stock to current expenses. When the equipment has become unserviceable, new stock is bought and charged to the construction or to the profit and loss account. In the meantime the nominal earnings of the railway seem large, and the managers reap whatever temporary benefit they may desire. The taxation of net profit in the sense that has been indicated would tend to check this practice, since deductions would be allowed for maintenance, but not for new equipment. A tax on net receipts, thus, would possess not only a financial, but also a wider economic advantage.

European experience all points to taxation of net earnings as the best system. One country, indeed, still assesses corporate property in some form or other. Switzerland, as we have seen, is the only European state which has retained the mediæval system, once common to all countries. The reasons, as was pointed out, are the comparative equality of conditions and the survival of the primitive villages and agricultural communities with their placid and homogeneous economic life. It is significant, however, that many of the Swiss commonwealths, in which we notice a gradual industrial development and a consequent differentiation of property, have attempted to remedy some of the obvious defects of the general property tax by supplementing it with an income tax. Thus some cantons, like Schaffhausen, Zürich, Basel, Aargau and others, tax corporations on their capital or their reserve fund; or, if the net receipts exceed a certain percentage of the capital, on their income. This system resembles, although in a very slight degree, those of New York and Pennsylvania. Other cantons, like

Bern, have abandoned the general property tax, and assess corporations only on their real estate and their income. Finally, some cantons, like St. Gall and Neuchâtel, tax corporations directly only on their income. Even in Switzerland, with its fondness for mediæval customs, we see, therefore, that the tendency is almost everywhere away from the taxation of corporate property. In the other European states this tendency has passed into accomplished fact.

In England, all corporations are held to be "persons" within schedule D of the income tax, and consequently they pay a tax on their net annual profits or gains. A series of important cases has elaborated the principles that should determine the exact nature of net profits.[1] The rules laid down are analogous to those described in the definition of net receipts just given. The tax, moreover, is paid before the dividends are declared. Railroads are also subject to the special passenger duty of five per cent on receipts from passengers, which is merely a survival of the old tax on stage coaches, and to a corporation duty, which is intended to take the place of the "death duties" on individuals.

In France, all corporations pay a tax on net profits in the shape of a three per cent tax on dividends, coupons and profits, known as the tax "*sur le revenu des valeurs mobilières.*" The tax is also applicable to joint-stock companies and to commercial enterprises,[2] while mutual insurance companies and similar associations have by judicial interpretation been exempted. Like individuals, corporations are also subject to real estate taxes and to the license taxes (*impôts des patentes*) on occupations. In the case of railroads, however, we still find a partial tax on gross receipts. The five per cent tax on gross receipts from freight, which was imposed

[1] Ellis, *A Guide to the Income Tax Acts*, 2d edition, pp. 80, 92–101.

[2] The tax is imposed on "les intérêts, dividendes, revenus et tous autres produits des actions de toute nature" of stock companies, and on "les intérêts, produits et bénéfices annuelles des parts d'intérêt et commandites" of all associations, *etc.*, without a divisible share capital. Law of June 29, 1872, art. 1. *Cf.* Tanquerey, *Traité théorique et pratique de l'Impôt sur le Revenu des Valeurs Mobilières*, pp. 23, 51, 143, *etc.*

after the Franco-Prussian war, proved to be so vexatious and so obstructive to industrial development that it was abolished a few years later.[1] But the old "tax on public conveyances" — a percentage on the fare —, which dates from the last century, was extended in 1855 to the receipts from passengers and from express traffic. In practice, this "public conveyance" or transportation tax[2] is not a direct tax on the corporations, but an indirect tax on passengers and on consignors of express packages; for the tax is added to the price of the ticket or receipt and is paid by the individual. The only direct tax is thus laid on net earnings. Corporations also pay the indirect taxes, like the stamp tax (*droit de timbre*) and the transfer tax (*droit de transmission*) on shares and bonds; but, simply to facilitate the administrative procedure, they may and generally do commute for these by paying an annual tax of one-twentieth and one-fifth of one per cent respectively on the amount of their capital stock.

In Italy corporations are taxed on their income or net earnings just like individuals, by the *imposta sui redditi della ricchezza mobile*. This "revenue of personal property," as it is called, is declared to consist, so far as corporations are concerned, in "all interest or dividends paid."[3] To make the term *dividends* still clearer, the law provides that "in the estimate of income are included all sums, under whatsoever title, distributed among the shareholders or added to capital, surplus or sinking fund or otherwise used in cancelling debts."[4] The Italian system is thus as comprehensive as the English.

[1] Levied in 1874; abolished in 1878.

[2] Droit sur les voitures publiques. *Cf.* Vignes, *Traité des Impôts en France*, 4th edition, i., p. 192.

[3] "Sono considerati come redditi di ricchezza mobile esistenti nello stato . . . gli interessi e dividendi pagati . . . delle compagnie commerciali, industriali e di assicurazione." Law of August 24, 1877, art. 3, b.

[4] "Nel reddito delle società anonime ed in accomandita per azioni, compresevi le società d'assicurazione mutua od a premio fisso saranno computate indistintamente tutte le somme ripartite sotto qualsiasi titolo fra i soci e

In Germany the taxation of corporations varies widely in the different commonwealths.[1] A few of the smaller states tax corporations for state purposes only on their realty and on their occupation (*Gewerbe-steuer*), and not on their income or net profits, because the shareholders are individually taxed on their income from the corporations. This point will be discussed in detail in the following chapter. In most of the states, however, corporations are taxed on their income. In Prussia railroads have been assessed since 1853 on their net receipts. The local taxes vary exceedingly throughout the empire. But whenever corporations are taxed at all on receipts, it is on net income. Corporations were formerly exempt from the local income tax, but they are now usually subject to it wherever it exists.[2] In only one instance are corporations taxed on their capital stock — in the case of mutual insurance companies, whose so-called dividends merely return in part the premiums paid by policy holders. On account of the difficulty of ascertaining the exact profits, Baden has therefore levied the income tax on an assumed amount of net profits, fixed at five per cent of the capital stock.[3]

The net receipts tax may thus be declared applicable in theory to all corporations. Some peculiar limitations arise,

quelle portate in aumento del capitale o del fondo di riserva ed ammortizzazione, od altrimente impiegate anche in estinzione dei debiti." *Ibid.*, art. 30. *Cf.* in general, Oronzo Quarta, *L'imposta sulla Ricchezza Mobile*, 2 vols. (Turin). See also Alessio, *Saggio sul Sistema Tributario in Italia*, i., p. 345; the chapters on Italy in Chailley, *L'impôt sur le Revenu;* and Burkart, "Die italienische Steuer auf die Einkünfte vom beweglichen Vermögen," in Schanz's *Finanz-Archiv*, vi. (1889), p. 30.

[1] For full details as to corporate taxation in each of the German states, see Antoni, "Die Steuersubjecte in Zusammenhalte mit der Durchführung der Allgemeinheit der Besteuerung nach den in Deutschland geltenden Staatssteuergesetzen," in *Finanz-Archiv*, v. (1888), pp. 382–499, especially 475 *et seq.*

[2] *Cf.* Meier, "Ueber die Frage der Communalbesteuerung" (in *Zehn Gutachten und Berichte über die Communalsteuerfrage, veröffenlicht vom Verein für Socialpolitik*), p. 104.

[3] Lewald, "Die direkten Steuern in Baden," in *Finanz-Archiv*, iii., p. 807.

it is true, from the clashing of commonwealth laws, but these will be discussed in the next chapter.

One objection still remains. It has sometimes been urged that a tax on corporate property is more just than a tax on corporate earnings, because the value of a corporate security is fixed not only by its present but also by its prospective productiveness. This is, however, a specious objection, since under a system of earnings taxation the future product will be taxed when it ultimately appears. If productiveness be accepted at all as the standard of capacity — and this is tacitly assumed in the above objection — the most logical and defensible method is the taxation of the product as it appears. But consideration for the individual producer makes it necessary, as has been pointed out above, to regard net, not gross product; and, therefore, if any one principle be accepted as the basis of the general corporation tax, it should be net profits, and not gross earnings or property.

III. *Practical Reforms.*

Our conclusion that the taxation of net receipts is without doubt the best system brings us face to face with the facts of American constitutional law. Is a tax on receipts unconstitutional? Is it in conflict with the constitutional inhibition of state interference with interstate commerce? This is an important question. Let us, then, consider the legal as well as the economic aspects of the problem.[1]

The earliest important case involving this question construed the Pennsylvania law which imposed a tax on each ton of merchandise carried, and an additional tax of a certain percentage on the gross receipts of railroad companies. The tonnage tax was declared unconstitutional.[2] The same principle was later applied to a tax of one cent for every message sent by a telegraph company. This, also, was held to be void as a tax on interstate commerce.[3] On the other hand,

[1] See in general, Professor Goodnow's article on "Taxation of Railway Gross Receipts," in *Political Science Quarterly*, ix., p. 233.

[2] State Freight Tax Cases, 15 Wall. 232 (1872).

[3] Telegraph Co. *vs.* Texas, 105 U. S. 460 (1881).

a state tax on the gross receipts of a domestic railroad company was upheld chiefly on the ground that the tax was laid upon a fund which had already become property. The gross receipts were said to be the fruits of transportation after they had become intermingled with the other property of the carriers.[1] The court, however, also contended that this was a tax on the franchise, measured by the amount of the business transacted, so that it was not clearly decided what was taxed, the franchise or the property.[2] Later the Supreme Court limited this general principle and decided that when the gross receipts, even of a domestic corporation, were derived entirely from interstate or foreign commerce, they could not be taxed.[3]

In the case of foreign companies, the rule seems to be more strict; for a tax on the gross receipts of a foreign corporation, even if derived only in part from interstate commerce, is declared void to the extent that the receipts are derived from such interstate commerce.[4] A tax on the gross receipts from business done wholly within the state is, however, valid.[5]

This distinction between foreign and domestic companies

[1] State Tax on Railway Gross Receipts, 15 Wall. 284 (1872). This was in imitation of the case of Brown *vs.* Maryland, which held that articles lost their character of imports after they had left the original package or the hands of the original importer, and had then become a part of the general property of the state. But see the second note following. See also Baltimore and Ohio R. R. Co. *vs.* Maryland, 21 Wall. 456 (1874), which held that a charter stipulation that a railway should pay a part of its earnings to the state as a bonus, was not a tax, and was perfectly valid.

[2] In Fargo *vs.* Michigan, 121 U. S. 210, the court emphasizes this side of the Railway Gross Receipts Tax decision. For a recent case, see People *ex rel.* R. R. Co. *vs.* Campbell, 74 Hun 210.

[3] Philadelphia S. S. Co. *vs.* Pennsylvania, 122 U. S. 326 (1886). In this case the court showed that the case of Brown *vs.* Maryland was really no authority for the decision in the case of the State Tax on Railway Gross Receipts, decided fifteen years before.

[4] Fargo *vs.* Michigan, 121 U. S. 230 (1886); Western Union Telegraph Co. *vs.* Alabama Board of Assessment, 132 U. S. 472 (1889). *Cf.* Coe *vs.* Errol, 116 U. S. 517 (1885).

[5] Ratterman *vs.* Western Union Telegraph Co., 127 U. S. 411 (1888).

seems to be maintained in a recent leading case. The Maine tax on gross receipts was upheld as being a tax not on receipts, but on the privilege of exercising the corporate franchise, the resort to receipts being made simply to ascertain the value of the business. But although this action was brought nominally against a foreign corporation, the facts show that the tax was due from a domestic corporation leased by this foreign corporation.[1]

The reason for the distinction between domestic and foreign corporations seems to be that in the case of a domestic corporation the thing taxed is the franchise, which may be measured at the discretion of the legislature (except that when all receipts are from interstate commerce the tax is invalid); while in the case of a foreign corporation the franchise cannot be taxed, but only the business. Since the thing taxed in the latter case is the business, the constitutional provision is violated whenever that business is so extended as to include interstate commerce.[2]

The same distinction which is observable in the Gross Receipts Tax cases has been maintained in others. Thus a license tax on foreign companies doing an interstate business is held invalid because it is a tax on the privilege of doing interstate commerce;[3] but a license on a domestic corporation for boats used in interstate commerce is valid.[4] So, too, a privilege tax upon every sleeping car belonging to a foreign corporation has been declared unconstitutional as a regulation of interstate commerce;[5] but when the sleeping cars are run wholly within the state over the line of a domestic

[1] Maine *vs.* Grand Trunk R. R. Co., 142 U. S. 217 (1891). The real party to the case was the Atlantic and St. Lawrence R. R. Co.

[2] *Cf.* Horn Silver Mining Co. *vs.* New York, 143 U. S. 305.

[3] United States Express Co. *vs.* Allen, 39 Fed. Rep. 712; Leloup *vs.* Port of Mobile, 127 U. S. 640; Krutcher *vs.* Kentucky, 141 U. S. 47.

[4] Wiggins Ferry Co. *vs.* East St. Louis, 107 U. S. 365 (1882). *Cf.* Osborn *vs.* Mobile, 16 Wall. 479 (1872), where a license fee was imposed on an agent of an express company doing business in Mobile.

[5] Pickard *vs.* Pullman Southern Car Co., 117 U. S. 34 (1886). It was distinctly held that the cars in question had no *situs* in the state (Tennessee) imposing the tax.

corporation, the tax is valid.[1] Again, a tax proportioned to capital stock and dividends is valid as to domestic corporations even though they be engaged in interstate commerce;[2] but if the business of a foreign corporation is interstate commerce exclusively, the tax on capital stock is void.[3] On the other hand, even though the tax be imposed on a foreign corporation, if it is assessed not on the business itself, but on the capital stock or property according to mileage, and if the corporate property is actually situate in the state, it will be upheld.[4]

The law, therefore, seems to distinguish in part between foreign and domestic companies. Yet in the recent Maine case, the tendency of the court, although it is expressed only in a dictum, seems to be opposed to this distinction; and the reasoning of the court would tend to uphold a gross receipts tax, whether imposed on domestic or on foreign corporations, provided any of the receipts be earned within the state.[5]

[1] Gibson County *vs.* Pullman Southern Car Co., 42 Fed. Rep. 512 (1890). Whether the counties may levy such a tax depends entirely upon the authorization which must be express, given them by the state law.

[2] People *vs.* Wemple, 117 N. Y. 136 (1889).

[3] People *ex rel.* Pennsylvania R. R. Co. *vs.* Wemple, 138 N. Y. (1893). This was the case of a railroad corporation whose line terminated without the state, but which had terminal facilities within the state for the delivery of passengers and freight, the sale of tickets and the collection of dues. A somewhat similar case was that of Gloucester Ferry Co. *vs.* Pennsylvania, 114 U. S. 196 (1885). Here the state attempted to impose a tax on the capital stock of a New Jersey company having no property in Pennsylvania except a wharf in Philadelphia. This tax was held void, as an interference with interstate commerce. Another similar case was that of Norfolk and Western R. R. Co. *vs.* Pennsylvania, 136 U. S. 114 (1890). The railway had no line in the state, but had an office there, and traffic contracts which made it a part of a system doing interstate business. A tax on capital stock of this corporation was held invalid, as interfering with interstate commerce.

[4] Pullman Car Co. *vs.* Pennsylvania, 141 U. S. 18 (1890); Pullman Palace Car Co. *vs.* Assessors, 55 Fed. Rep. 206 (1893). *Cf.* Telegraph Co. *vs.* Massachusetts, 125 U. S. 530 (1890).

[5] "The privilege of exercising the franchises of a corporation within a state is generally one of value, and often of great value and the subject of earnest contention. It is natural, therefore, that the corporation should be made to pay some proportion of the burdens of the government. As the

It is greatly to be hoped that this dictum may soon be developed into law, for from the economic point of view the distinction between domestic and foreign corporations is entirely indefensible. Strictly carried out, it would render substantial justice in taxation almost impossible. If a foreign corporation cannot be taxed where its earnings are received, because it is a foreign corporation; and if it cannot be taxed by the state of its domicile, because the earnings are not received there, it would manifestly evade its due share of the burden. But if every state could tax the receipts of any corporation, so far as they are actually earned within the state, no corporation could escape under the plea of its foreign origin, and the foundations would be laid for an equitable system based on interstate agreement. The force of the constitutional provision would, moreover, still be sufficiently strong to prevent unjust discriminations against foreign commerce or foreign business.

Even granting that under the present interpretation of the law a tax on the gross receipts is invalid, the case is not yet closed in relation to a tax on net profits or income. If a gross receipts tax is unconstitutional, will not a net receipts tax be equally so? An *obiter dictum* of the court might lead us to suppose that there is a legal distinction between a net income and a net receipts tax, and that the former, as applied to transportation companies, is permissible.[1] In the memorandum of a new system of taxation

granting of the privilege rests entirely in the discretion of the state, *whether the corporation be of domestic or foreign origin*, it may be conferred upon such conditions, pecuniary or otherwise, as the state in its judgment may deem most conducive to its interests or policy. . . . The character of the tax or its validity is not determined by the mode adopted in fixing its amount for any specific period or the times of its payment. . . . The rule of apportioning the charge to the receipts of the business would seem to be eminently reasonable, and likely to produce the most satisfactory results both to the state and the corporation taxed." Justice Field, in Maine *vs.* Grand Trunk R. R. Co., 142 U. S. 217 (1891).

[1] The court holds that the gross receipts tax is unconstitutional because it is a tax not on *income*, but on *receipts*, *i.e.* on transportation. Query: would not a tax on income then be constitutional? See 122 U. S. 345.

published by a member of the revenue commission of Pennsylvania, it is assumed that such a tax does not fall within the scope of the recent decisions, but is perfectly constitutional.[1] This would be a result much to be desired; but it must be confessed that the final opinion of the court is problematical, in view of its extreme sensitiveness to any interference with interstate commerce.[2]

If the decision of the court should be adverse, only one course would remain open in regard to transportation companies. Granting that a tax on net receipts is the best, and that a state tax on net receipts is declared illegal, there might be a national net receipts tax. The federal law might impose a tax on net receipts, providing for the levy, if necessary, by the commonwealth officials themselves, and apportioning the proceeds according to the mileage in each state. Such a plan would be free from objections of an economic nature and would avoid many of the difficulties connected with double taxation. The principle would be analogous to that of the English "grants in aid." But however desirable such a plan would be, it is doubtful whether the national government has the constitutional right to levy a tax for such purposes. Entirely apart from the question of power, moreover, it must be confessed that such a federal tax on net earnings is improbable, at all events in the near future. As we are seeking not only the ideal, but also the practicable, some other plan must be devised.

The only other method of taxing transportation companies which at all deserves approbation is that first employed in Connecticut, and since then in several other states, *viz.*, laying the tax on the market value of the stock plus the indebtedness, in the proportion that the mileage within the state bears to the total mileage. This

[1] John A. Wright, *Memorandum of a System of Taxation, submitted to the Commission for Revision of the Revenue Laws of Pennsylvania* (1890), pp. 10, 13.

[2] "In imposing [franchise] taxes care should be taken not to interfere with or hamper directly or *by indirection* interstate or foreign commerce." 122 U. S. 345. *Cf.* 127 U. S. 648.

would be applicable to railway, telegraph, telephone and express companies, but of course not to ocean or coastwise steamship companies, which have no mileage within any state. Connecticut, as we know, applies the tax only to railroads. Such a tax would be certain, simple of enforcement, and would attain justice as among the separate states. As we have seen, it would not attain perfect justice as among the separate corporations; yet it is so far superior to all the other methods which have been discussed, that it can be strongly recommended as the type to which the commonwealths should conform their taxation of transportation companies, if the net receipts tax be pronounced unconstitutional. As to all other corporations, however, where the constitutional limitation would scarcely ever apply, the logical and practicable system would be to tax them on their net revenue according to carefully defined rules. Wherever special conditions prevent the employment of this method, they should be taxed on a valuation equal to that part of the market value of the capital plus the bonded debt employed within the state.

This, therefore, is our general conclusion; but it does not yet exhaust the problem of corporate taxation. We are, in fact, only on the fringe of the difficulties. Let us proceed in the next chapter to study some of the more complicated questions.

NOTE OF 3D ED.—A new step in the taxation of franchises has been taken by New York in 1899. The law taxes as a "special franchise" the privilege conferred upon quasi-public corporations to make use of city streets and public places, either on, above, or below the surface. This franchise is to be assessed as real estate, and the proceeds devoted to the locality. The ascertainment of the values of this franchise is left, not to the local assessors, who still tax the corporation upon the visible real estate and the personalty, but to the State Board. See in general, Seligman, "The Franchise Tax Law in New York," *Quarterly Journal of Economics*, xiii., pp. 445-452. A somewhat similar "special franchise" tax law was enacted in New Jersey in 1900.

CHAPTER VIII.

THE TAXATION OF CORPORATIONS.

III.

COMPLICATIONS AND CONCLUSIONS.

THE discussion of the taxation of corporations would be incomplete without an examination of the various phases of double taxation. This is the more necessary for the reason that no attempt at a thorough analysis has ever yet been made. Yet the problems that hinge upon this particular question are so especially important in the United States as to demand the most serious attention.

In a former chapter[1] we have already discussed some of the general aspects of double taxation. Let us now attempt to develop the principles in the light of actual practice.

There are in reality no less than five different forms of double taxation in the case of corporations: —

1. Double taxation of property and of debts, or of income and of interest on debts.
2. Double taxation of property and of income.
3. Double taxation of property and of stock.
4. Double taxation arising from conflicts of jurisdiction.
5. Double taxation of the corporation and of the holders of stock or bonds.

I. *Taxation of Property and of Debts.*

This first case need not detain us long. The only illustrations in the United States are found under the general

[1] *Supra*, chap. iv.

property tax, which we have discarded as the basis of corporation taxation. In many of the states corporate debts must be considered in estimating the value of the capital stock. In New York, as regards local taxation, the indebtedness must be taken into account in assessing the capital stock; but after the valuation has been fixed, the amount of the indebtedness cannot be deducted.[1] If the capital stock is of no value because the indebtedness exceeds the assets, it should not be assessed.[2] In the case of foreign corporations, however, which are taxable on the amounts invested in the state, it has been held that the law does not contemplate the deduction of debts.[3]

We have already pointed out that there is really no injustice in not exempting corporate indebtedness. The issue of mortgage bonds by a corporation is simply another mode of increasing the working capital. Correct policy demands the taxation of corporate bonds as well as of stock, of loans as well as of share capital. To tax corporate debts may, indeed, be called double taxation in so far as the tax on both stock and debt is paid out of the same income; but if so, it is double taxation of a perfectly legitimate kind. It is here that the principles of individual and corporate taxation diverge.

Some of the American commonwealths, as California, Connecticut, Maryland and Pennsylvania, recognize this distinction between the taxation of individuals and that of corporations, by permitting the deduction of indebtedness from the property of individuals but refusing a like deduction in the case of corporate property. In California, the courts held distinctly that what would be double taxation in the case of individuals is permissible in the case of corporations.[4] Some of the Swiss cantons, like St. Gall, Zürich and Ticino, observe the same distinction.[5]

[1] 1 Thomp. and C. 635; 100 N. Y. 597; 112 N. Y. 565.

[2] People *vs.* Commissioners, 31 Hun 32 (1st Department).

[3] People *vs.* Barker, 141 N. Y. 118.

[4] Central Pacific R. R. Co. *vs.* Board of Equalization, 60 Cal. 35.

[5] Schanz, *Die Steuern der Schweiz,* ii., p. 338; ii., p. 435; iv., p. 281.

Perhaps more interesting and probably of greater future importance in the United States is the other phase of this question of the taxation of indebtedness — double taxation of income and of interest on debt. While the true theory of income taxation in the case of individuals demands the deduction of interest on debts, it has already been shown that in the case of corporations the interest paid on mortgage bonds must be included in the taxable income. Taxation of interest on corporate debt is not double taxation, because the coupons, like the dividends, are integral parts of the income; because both bonds and stock together form what is really the working capital from which the income is derived. This question has already been discussed; but the radical difference in economic significance between a corporate bond and an individual debt must be continually borne in mind.

II. *Taxation of Income and of Property.*

This second form of double taxation, like the first, involves no very complicated question; nor does the solution present many difficulties. Is it permissible to tax a corporation both on its property and on its net receipts or income? If corporations are put upon the same plane as individuals, the simultaneous taxation of the property and of the income from the property works no injustice. As we have seen above [1], if all are treated alike and if the tax is uniform, there is really no cause for complaint.

So far as corporations are concerned, this is not a matter of practical importance. The only case in which this special question has arisen in the United States was under the laws of Alabama, now repealed, which provided for the taxation of corporate property and also of the corporate income during the preceding year.[2] Such taxation was upheld on the

[1] *Supra*, pp. 97–98.

[2] Ala. laws of Feb. 22, 1866; Feb. 19, 1867; Dec. 31, 1868; March 19, 1876; March 6, 1876.

ground that it was only apparently double taxation.[1] What the court meant was, of course, not that it was not double taxation, but that it was not invalid or economically unsound taxation. In this the court was correct, for the law applied equally to all individuals and to corporations.

At present in the United States no attempt is made to tax simultaneously both corporate property and corporate income. The nearest approach to the practice is the system in Pennsylvania and New York of taxing the capital stock and also the gross receipts of certain corporations. No objection has been raised to these taxes on the score of double taxation; nor is it likely that such an objection ever will be raised. One might as well object to a combination of direct and indirect taxes as involving duplicate taxation, on the ground that all taxes are in the last resort paid (or presumed to be paid) out of annual income. So, again, in some of the Southern and Western states, as we know, corporations are taxed on their business, by license or occupation taxes, and again on their receipts, and this practice is upheld as perfectly valid.[2] This second form of double taxation is entirely proper.

The classic home of double taxation of this sort is Switzerland. Baselstadt, for instance, taxes corporations one per mill on the paid-up capital, a quarter of one per mill on the capital not yet paid up, and one per cent on the total net income from all sources.[3] In Baselland corporations are taxed on their general property and again on their total profits, with the exception that when any of the profits consist of interest on capital the profits are not taxed if the capital has already been assessed.[4] Many of the cantons, however, seek to avoid the simultaneous taxation of property and income by an arrangement of the following sort:

[1] Board of Review *vs.* Montgomery Gas Light Co., 64 Ala. 276. *Cf.* Lott *vs.* Hubbard, 44 Ala. 593.

[2] *Cf.* 95 Mo. 360, where the court holds that it is not duplicate taxation.

[3] Law of 1889, §§ 2, 3. Schanz, *Die Steuern der Schweiz*, ii., p. 84; v., p. 50.

[4] Schanz, *op. cit.*, i., p. 55; v., p. 35.

While the law provides for the assessment of both property and income, a deduction is made in the case of the income tax for so much of the income as is supposed to represent the actual profits of the capital already taxed. The proportion thus deducted is fixed in accordance with the estimated current rate of interest, ranging from four per cent in Thurgau and Grisons to five per cent in Zug, Schaffhausen, Ticino, Vaud and Zürich. The federal government deducts five per cent.[1] This principle has now also been applied in Prussia, where since 1891 the income tax is assessed on corporate income, after deducting a sum equal to three and a half per cent of the paid-up capital.[2] Bern and St. Gallen are the only Swiss cantons which attempt to draw a sharper line by levying the property tax only on the corporate real estate, but subjecting all the other property to an income tax.[3] In St. Gallen the real estate tax is for local, the income tax for cantonal purposes.

The solution of the supposed difficulty attempted by the majority of the Swiss commonwealths is, however, not a happy one. The deduction from income of the four or five per cent, assumed to represent the earnings of property, involves a misconception. It is impossible to say how much of the income represents earnings of capital and how much represents the other ingredients of profit. We are brought face to face with complicated questions of economic theory — with the distinction between interest and profits, and the separate ingredients of profits. A discussion of these questions lies beyond the province of this essay. But it may be confidently asserted that if a railway corporation with no bonded indebtedness and a capital of one million dollars earns seventy-five thousand dollars, it is impossible to maintain that fifty thousand dollars represents the earnings of the property and the remainder the earnings of the management. From one point of view all such profits are profits on capital

[1] *Ibid.*, i., p. 56.

[2] *Einkommensteuergesetz* vom 24 Juni, 1891, § 16.

[3] Schanz, *op. cit.*, ii., pp. 318, 368 ; iii., p. 292.

or property. An individual can indeed obtain a professional income without any capital; but in the case of a business with capital invested, it is impossible to say how much of the profits are due to the capital, how much to the personal management. Without the capital there would be no profits at all, because there would be no business. Therefore, in taxing profits we are really taxing property, or rather the proceeds of property. To segregate a part of these proceeds and to say, as do the Swiss cantons, that only this particular part represents the income from the property, is an entirely arbitrary proceeding.

Again, it cannot be contended that even this four or five per cent of income exempted by the Swiss laws represents only the interest on the capital, and that the remainder of the income represents the earnings of management. Under no theory of economic profits can the surplus above current interest be entirely dissociated from capital. Even granting that a sharp line can be drawn between interest, earnings of management and profits, it still remains incorrect to confine the proceeds of capital to interest alone. It is thus inadmissible to say that in taxing income only on the surplus above four or five per cent of the taxable capital we avoid taxing both property and income.

The Swiss system has indeed a very decided significance in connection with an entirely different matter, *viz.*, the question of funded or unfunded income. But as regards the point now under discussion it is evident that the Swiss cantons do not really succeed in avoiding double taxation. As we have seen, however, it is a form of double taxation which is in itself legitimate.

III. *Taxation of Property and of Stock.*

This third form of duplicate taxation must not be understood to refer to the taxation of shares of stock in the hands of individuals. That is a different problem, and falls under another heading, to be discussed below. The point here to

be discussed is this: Is it permissible to tax the corporation on its property and again on its capital stock?

The answer is plain. Manifestly not, if the corporate stock can be regarded as representing actual property. We have, indeed, seen that it is a mistake, economically, to say, as do some of our courts, that the entire property of a corporation is identical with its capital stock. This point has been brought out so well in a Massachusetts case, and is so generally misunderstood, that it may be wise to make a more extended quotation from the decision: —

> The market value of the shares of a corporation . . . does not necessarily indicate the actual value or amount of property which a corporation may own. The price for which all the shares would sell may greatly exceed the aggregate of the corporate property, or it may fall very far short of it. Undoubtedly the amount of property belonging to a corporation is one of the considerations which enter into the market value of its shares; but such market value also embraces other essential elements. It is not made up solely by the valuation or estimate which may be put on the corporate property, but it also includes the profits and gains which have attended its operations, the prospect of its future success, the nature and extent of its corporate rights and privileges, and the skill and ability with which its business is managed. In other words, it is the estimate put on the potentiality of a corporation, on its capacity to avail itself profitably of the franchise, and on the mode in which it uses its privileges as a corporate body, which materially influences and often controls its market value.[1]

While it is true, therefore, that capital stock and total property are not interchangeable terms, it cannot be denied on the other hand that the capital stock represents at all events a part of the property, or rather that the corporate property is one of the elements that contribute to the value of the capital stock. So far as this is true, the simultaneous taxation of corporate property and corporate stock involves, to this extent at least, duplicate taxation of an unjust character.

[1] Commonwealth *vs.* Hamilton Manufacturing Co., 12 Allen 303.

Unfortunately, there is no absolute uniformity in the legal decisions on this point. While the majority of the commonwealths hold taxation of this kind to be unjust, Pennsylvania has pronounced it valid. In a celebrated case the court used this language: —

Double taxation has never been considered unlawful in this state. The real and personal property of a corporation may be taxed, although it pays a tax on the stock which purchased it. The power of the legislature is as ample to tax twice as to tax once, and it is done daily as all experience shows. Equality of taxation is not required by the constitution.[1]

Such a decision may be correct legally, but beyond all doubt it is unsound economically. Equality of taxation may not be required by the constitution of Pennsylvania, but it is one of the first laws in the science of finance. Abandon equality, and you throw the door wide open to all kinds of glaring abuses. The theory as formulated by the Pennsylvania courts cannot possibly be upheld from the scientific standpoint.

The Pennsylvania courts, however, hold that so far as the capital stock of a domestic corporation represents tangible property outside of the state it is not taxable.[2] Further, it has recently been decided that the real estate of a corporation, being part of its capital stock and paying state taxes, is not locally taxable.[3] Finally, in another case it has been held that so far as the property of a corporation is essential to the exercise of its corporate franchise, it is included in the capital stock and is not taxable. The law will not subject it to duplicate taxation by mere inference.[4] Thus Pennsylvania is gradually abandoning its earlier decisions.

Far wiser from the very beginning were the Maryland

[1] Pittsburgh *etc.* R. R. Co. *vs.* Pennsylvania, 66 Pa. State 77. *Cf.* Lackawanna Iron Co. *vs.* Luzerne County, 42 Pa. State 424.

[2] 101 Pa. State 119; 41 Legal Intelligencer 125.

[3] 7 Lane 317.

[4] 148 Pa. State 162; 148 Pa. State 282. See also 145 Pa. State 96.

courts, which held that all laws must be so construed as to avoid double taxation of this kind; and that, since in their opinion the capital stock of a corporation represents the corporate property, the payment by the corporation of a tax on capital stock necessarily exempts all the corporate property.[1] In this broad form the decision is perhaps open to criticism because of the complete identification of capital stock with corporate property; but as regards the point at issue here, it is correct. To tax corporations simultaneously on their stock and on their property is indefensible. A few commonwealths, like Alabama, Illinois, Indiana, Maryland, Vermont and (for local purposes) New York, have now recognized this principle in their statutes, deducting from the value of the capital stock the value of the realty or of both the real and personal property taxed.[2]

On the other hand, the apparently similar statute of Massachusetts, which taxes corporations on their capital stock less the value of the real estate and machinery,[3] is open to criticism for another reason. According to the Massachusetts law, corporations are taxable by the local bodies on their real estate and machinery, but at a rate equivalent to the combined rate for local and state purposes. They are then taxable by the state on the value of their capital stock, deducting the value of the real estate and machinery; but this state tax is fixed at a rate equivalent to the combined local and state rate on general property. While, therefore, Massachusetts avoids double taxation of both property and stock, it does not solve the problem of affording the commonwealth government an adequate reve-

[1] County Commissioners *vs.* National Bank, 48 Md. 117. *Cf.* State *vs.* Stirling, 20 Md. 520; State *vs.* R. R. Co., 40 Md. 22.

[2] Md. law of 1878, in Pub. Gen. Laws, art. 81, §§ 84, 85, 141–144; Ala. Code, § 453, sec. 8; Ill. Rev. Stat., chap. 120, § 3; Ind. Laws of 1891, chap. 4; New York Laws of 1857, chap. 456, § 3, vol. 2, p. 1; Vt. Rev. Laws, § 288. In New York, as we know, corporations are locally taxable on their realty and their capital stock, deducting the amount invested in real estate.

[3] Mass. Pub. Stat., chap. 13, § 40

nue. According to the theory elsewhere elaborated in these chapters, corporations should always be locally taxable on their realty; but the commonwealth tax should be levied on the total income, or on the total property, without any deductions (except those arising from considerations of interstate comity and equity, to be discussed below). The whole treatment of double taxation is here based on the assumption that the tax is levied by administrative units of the same grade, whether states or local divisions. It manifestly does not apply to cases where one tax is levied by the commonwealth, and another similar or different tax is levied by the county or city, as in Massachusetts. Otherwise we should be forced to the conclusion that the property tax always involves a double, triple or quadruple taxation so far as state, county, town and village levy different rates on the same property. This is, however, only a juggle with words; such taxation is not in the scientific sense double taxation. Strictly speaking, therefore, the Massachusetts principle, while ostensibly sound, is really incorrect. So far, however, as it attempts to solve another problem — that of the division of the tax between the place where the corporation carries on its business, and the place where the stockholder resides — the law is deserving of consideration. But that is a point which belongs properly to one of the subsequent sections.

In Switzerland, we find, in the few cases where both tangible property and capital are assessed, that the value of the taxable property is deducted from the corporate capital. Thus the new constitution of 1885 in Aargau provides for the taxation of the corporate real estate for both commonwealth and local purposes, the value of the realty being then deducted from the capital stock.[1] The same custom prevails in Schaffhausen.[2] The Swiss tendency, like the American, is gradually coming to be in accord with the sounder principles.

[1] Schanz, *Die Steuern der Schweiz*, ii., p. 239.
[2] *Ibid.*, ii., p. 170 (note 1).

We come now to the most important aspects of double taxation — the fourth and fifth forms. Here we have the benefit of a wide European experience. In the phases of duplicate taxation hitherto treated we can learn very little from Europe, because in no European state except Switzerland are the corporations taxed on their property as a whole; and in Switzerland the entire question of corporation law is in a far more inchoate condition than in the more developed industrial states. But the problems that we now take up present themselves in Europe as well as in the United States, and have there received in some respects extended consideration, although they have not yet been successfully solved.

IV. *Double Taxation due to Conflicts of Jurisdiction.*

This fourth form of duplicate taxation appears in connection with almost every method of corporate taxation. It is so comprehensive that it will be advisable to discuss the subject under four chief headings : —

1. Interstate taxation of corporate property.
2. Interstate taxation of stock and bonds or of dividends and interest.
3. Interstate taxation of non-resident stockholders or bondholders.
4. Interstate taxation of corporate receipts or income.

1. *Interstate taxation of corporate property.* The difficulty here arises in connection with the taxation of personal property. In the case of real estate the rule universally adopted in the United States is that the property should be taxed where it is situated, and there is accordingly no chance for interstate complications. But in the case of personalty the great problem is that of *situs*. Should the personalty be taxed where it is situated or should it follow the domicile of the owner? The legal conditions in the United States are most unsatisfactory.

We have seen in another place[1] that the American states waver between the principles of *situs* and of *mobilia personam sequuntur*, — that is, some tax only the personalty actually situated in the state; while others tax all the personalty, no matter where situated, of a resident. The same piece of personal property may therefore be taxed in two states. The obvious result, of course, is double taxation of a nature which cannot possibly be justified.

In the case of corporations, we are confronted by precisely the same difficulties, for corporate property is treated in the main like that of individuals. It is entitled to the same exemptions and subject to the same conditions. It will be readily perceived, however, with what difficulties the problem is beset when, as is usually the case, the personalty of a corporation is assessed at its place of business as the legal *situs*. In many states, like Michigan, Pennsylvania and New York, it has been held not permissible to tax corporations for property outside the state;[2] and in South Carolina the tax is specifically limited to corporate property within the state.[3] In other cases it has been held that the movable property of a corporation in use in other states is taxable only in the state of the corporation's domicile.[4] In Pennsylvania, it has been held that corporate property, consisting of dredges, *etc.*, not permanently located anywhere, may be taxed in the state of the corporation's domicile as part of the stock.[5] Some states, like New York and California, apply the same rule to corporate as to individual property, and seek to avoid double taxation of this kind. In New York, in order to exempt the personal property of a corporation be-

[1] *Supra*, p. 112.

[2] State Treasurer *ex rel. vs.* Auditor-General, 46 Mich. 224; Graham *vs.* Township of St. Joseph, 67 Mich. 652.

[3] S. C. Rev. Stat. chap. 12, sec. 28. For other cases, see Commonwealth *vs.* Railroad Co., 145 Pa. State 96, distinguishing Commonwealth *vs.* Dredging Co., 122 Pa. State 386; Commonwealth *vs.* Westinghouse Air Brake Co., 151 Pa. State 276; Commonwealth *vs.* St. Bernard Coal Co., 9 Southwestern Reporter 709 (Ky.).

[4] Baltimore and Ohio R. R. Co. *vs.* Allen, 22 Fed. Rep. 376.

[5] Commonwealth *vs.* American Dredging Co., 122 Pa. State 386.

cause it is outside of the state, the change of location must be permanent and unequivocal.[1] But in most of the states the rule *mobilia personam sequuntur* is applied, and domestic corporations, at all events, are taxed on their whole property.[2] In the case of foreign corporations, however, it is fast becoming the custom, even in most of the states which levy a corporate property tax, to exempt the intangible property, on the principle that the domicile of the foreign corporation is not changed by its doing business in other states.[3]

Manifestly, if the commonwealths will still cling to the policy of taxing the actual corporate property, the only logical and just method is for each state to exempt so much of the corporate property as is already taxable in another state. The federal government has unfortunately not exercised its right, — if indeed it possesses any — to compel such uniformity. Our only hope, therefore, lies in the progress of correct public sentiment and its influence on commonwealth legislation. Until then, we shall still be confronted by the present confusion.

2. *Interstate taxation of corporate securities.* The evils arising from the simultaneous taxation by different states of the same corporate stock or bonds or of dividends and interest have been so patent as to lead to statutory changes and judicial interpretations of considerable importance. In Pennsylvania, after being long the custom, it has now been judicially decided to be the law, that the tax on capital stock applies not to the whole capital but only to such a proportion of the capital stock as is employed, either actually or con-

[1] People *ex rel.* Pacific Mail S. S. Co. *vs.* Commissioners, 64 N. Y. 541. As to how the realty outside the state should be valued, see 52 Hun 93; People *ex rel.* Panama R. R. Co. *vs.* Commissioners, 104 N. Y. 240 (1887). For California, see San Francisco *vs.* Fry, 63 Cal. 470 (1883); San Francisco *vs.* Flood, 64 Cal. 504 (1884).

[2] So, for instance, in New Jersey personal property outside of the state, which is exempt in the case of individuals, is taxable when owned by corporations. State *vs.* Metz, 3 Vroom 199; State *vs.* Haight, 6 Vroom 279.

[3] *Cf.* Insurance Co. *vs.* Assessors, 44 La. Ann. 760. *Cf. ibid.*, 765.

structively, within the state.[1] In New York, the original statute attempted to follow the old rule; but the law has now been so amended as to provide expressly for the taxation of only so much of the capital stock as is employed within the state.[2] In a case which arose under the old statute, although decided after the passage of the amendment, the court of appeals declared itself forced to adhere to the old rule, saying that, although it was extremely hard and unjust, the court was unable so to construe the statute as to relieve the corporation from the provisions of the law.[3] The principle in both these commonwealths now applies equally to domestic and to foreign corporations. In Massachusetts, however, where the franchise tax, as we have seen, is applicable only to domestic corporations, the general corporation tax is levied on the total capital stock irrespective of its employment.

So far as railroads are concerned, it has become the common practice to assess only so much of the capital stock as is represented by the proportion which the mileage in the state bears to the total mileage. This is true even in states like Massachusetts, which do not apply the principle to corporations in general, as well as in states like Connecticut, where stock and bonds are taxable. Such a standard, while not perfectly exact, is fairly accurate; and has been upheld as entirely constitutional.[4] It is applicable equally to telegraph companies and to other transportation companies; and is gradually being applied to them, although not quite so commonly as in the case of railroads, in all those states which tax capital stock directly. The principle is sound, although it may be contended with justice that business done, *i.e.* receipts, is an even better test than mileage.

[1] Commonwealth *vs.* Standard Oil Co., 101 Pa. State 119. As to the previous custom, *etc.*, see *Decisions of the Auditor-General*, 1878–80, p. 206.

[2] New York Laws of 1885, chap. 501, p. 858.

[3] People *vs.* Horn Silver Mining Co., 105 N. Y. 76, especially 88.

[4] Delaware Railroad Tax Case, 18 Wall. 208; Erie Railroad *vs.* Pennsylvania, 21 Wall. 492.

For other corporations, however, it will readily be seen how vague is the New York and Pennsylvania doctrine of "capital employed within the state." What business firm or corporation with ramifications all over the country can tell exactly or even approximately how much of its capital is "employed" within any one state? Even if they can, how many of them will tell, when concealment will enable them to evade the tax? In some of our commonwealths the state officers have the right to inspect the books of corporations and to change the assessments if they deem them too low. Even then, what guarantee is there that they will discover the real proportion? The taxation of so much of the capital as is employed within the state is extremely difficult.

It is interesting to notice some recent New York decisions on this point. A Massachusetts corporation — a telephone company — was taxed in New York by assessing the whole capital in proportion to the number of telephones used in the state. Although the whole tax was declared invalid for another reason, *viz.*, that the corporation was not technically "doing business" in the state, the court entered into a discussion, *obiter* indeed, of the question with which we are dealing here. Chief Justice Ruger used the following language: —

> It is by no means clear that the mode adopted . . . produces a correct result. . . . We are quite unable to sanction a principle which would subject it [the corporation] to the liability of being taxed, not only in [the state] where it is located, as it undoubtedly would be under the law as laid down by us [in the Horn Silver Mining Company Case], on its entire capital stock and gross earnings; but also in each state of the Union in which it should own telephones on such proportion of its capital stock and gross earnings as the law-makers of such state saw fit to impose.[1]

It is difficult to see the justice of this conclusion. It happens to be true that Massachusetts still follows the incorrect and

[1] People *vs.* American Bell Telephone Co., 117 N. Y. 242, especially 256.

inequitable plan of taxing the whole capital. But that is no excuse for the New York court to interpret the old statute in the same way, or to assume that other states will also follow the precedent which the court itself pronounces "extremely hard and unjust." Two wrongs do not make a right. In the absence of any federal law regulating the subject, the only upright course for each commonwealth to pursue is to follow the dictates of interstate comity and the sound principles of the science of finance by taxing only so much of the corporate capacity as is, economically speaking, within its jurisdiction. As we have repeatedly said, the taxation of corporate stock is by no means the ideal method. But if the New York principle of taxing capital stock and gross earnings be nevertheless followed, it is difficult to discover any more practicable or more defensible method of ascertaining the due proportion of capital stock employed or gross profits earned within the state than by considering the number of, or royalties from, the telephones used. This is analogous to the Connecticut system of proportional mileage as applied to railroad companies. In the case of telephone companies, however, the number of instruments used is a better test than the mileage of the telephone wires; for the capital, as well as the expenses, is far more nearly in direct proportion to the number of telephones in use than to the amount of the wire employed.

In the above case the law was declared invalid because the tax was assessed on a foreign corporation. Even though this foreign corporation held stock in various domestic corporations, it was not legally doing business in the state; since before a foreign corporation can be taxed under the New York law it must not only employ a portion of its capital in that state, but must also be engaged in doing business there.[1] In the case of a domestic corporation the fact that the capital is employed within the state is a sufficient ground for taxation. So far as its capital stock is invested in the stock of foreign

[1] People *ex rel.* American Construction and Dredging Co. *vs.* Wemple, 129 N. Y. 558 (1892).

companies, it is not taxable because it is not employed within the state; but so far as its capital is invested in the bonds of foreign corporations taken in return for the sale of patent rights, it is taxable.[1] In another case it was held that the proportion of sales within the state to the total sales of a foreign corporation is not a fair test of the capital employed within the state. Sales may be made by sample, so that the corporation may simply keep an office in the state and employ none of its capital there.[2]

In some recent laws, as in Kentucky, the proportion of the capital stock which is taxed must bear the same proportion to the entire capital stock that the corporate receipts in the state bear to the total corporate receipts. This is a simple solution of the problem, but falls properly under the heading of double taxation of receipts, to be discussed below.

3. *Interstate taxation of non-resident bondholders or stockholders.* The subject of the taxation of corporate stock or bonds is complicated in another way by the question of extraterritoriality. The problem is this: Can a corporation, even though its capital be employed wholly within the state, be taxed on its capital or bonded debt if these are owned in part by residents of another state?

The federal Supreme Court has arrived at some very remarkable conclusions. So far as bonds are concerned, the above practice has been pronounced unconstitutional. In one case it has been held that a state tax on bonds issued by a railroad company and secured by a mortgage on a line lying partly in another state was void, because the state was taxing to that extent "property and interests beyond her jurisdiction."[3] A later case went further and decided in general terms that a tax on corporate bonds is invalid as to non-resident owners, because the debts are not the property

[1] People *ex rel.* Edison Electric Light Co. *vs.* Campbell, 139 N. Y. 543 (1893).

[2] People *ex rel.* The Seth Thomas Clock Co. *vs.* Wemple, 133 N. Y. 323 (1892).

[3] Railroad Company *vs.* Jackson, 7 Wall. 262.

of the debtor, *i.e.* the corporation, but of the creditors, *i.e.* the bondholders. They are the obligations, not the property, of the debtors. But the creditors cannot be taxed on their property because they are not within the jurisdiction of the state.[1] The particular statute in this case was the Pennsylvania law of 1868, requiring corporations to retain five per cent on the interest due on the bonds, payable to non-residents. The state courts which had hitherto entertained a different opinion were compelled to acquiesce; and in a later case, decided in the same commonwealth, the state tax on corporate loans, *i.e.* on bonded indebtedness, was upheld only so far as it applied to the bonds owned by the residents,[2] being declared to be a tax on the bondholder, not on the corporation.[3] This, therefore, is the accepted law of the land as to bonds.

Shares of stock, on the other hand, are treated quite differently. It has indeed been decided that a state tax on dividends is unconstitutional as to non-residents if the corporation be required to withhold the tax from the dividends.[4] The New Jersey courts, moreover, have held that a corporation is not liable on that part of its stock owned by non-residents.[5] The Maryland statute, as we know, is to the same effect. The United States courts, however, have uniformly maintained that a state tax on capital stock, even though the stock be held partly by non-residents, is legitimate on the ground that the tax is laid on the corporation as a whole, and not on the individual shareholder.[6] A recent case has even decided that a state tax on the shares of stockholders, which the company is required to pay irrespective of dividends, is not a tax on the shareholders but on the corporation.[7] This is held to be true notwithstanding the fact that in another

[1] State Tax on Foreign-held Bonds, 15 Wall. 300.
[2] Commonwealth *vs.* Delaware Division Canal Co., 123 Pa. 594.
[3] Bell's Gap R. R. Co. *vs.* Commonwealth, 134 U. S. 232.
[4] Oliver *vs.* Washington Mills, 11 Allen 268.
[5] 26 N. J. 181; 3 Zabriskie 506, 517.
[6] Delaware Railroad Tax Case, 18 Wall. 208.
[7] New Orleans *vs.* Houston, 119 U. S. 265.

case a tax on dividends or interest paid by the corporation was held to be a tax on the income of the stockholder or of the creditor, and not on the income of the corporation.[1]

The present state of the law, therefore, is that the entire capital stock of a corporation may be taxed by any commonwealth, but that only so much of the bonds are taxable to the corporation as are owned by residents of the state. The mere statement of this proposition makes it evident how impracticable would be the otherwise admirable system of taxing corporations by a separate tax on stock and an additional tax on bonds. The Pennsylvania system, which at first blush seemed to be an excellent solution of the problem, thus appears to be shorn of its chief merits, if the present law of the land is sound. The great majority of states, the bonds of whose corporations are owned mainly outside of the state in large financial centres like New York or Boston, would find such a tax sadly inadequate.[2] Even in the

[1] United States *vs.* Railroad Co., 17 Wall. 332.

[2] An investigation by the Pennsylvania Tax Conference disclosed the following facts as to certain Pennsylvania railroads: —

Total Bond Issues.	Amount held in Pa.	Appraised Value of Stock.	Percentage of Line in Pa.
$450,000	$116,000	$450,000	100
352,000	63,000	1,400,000	"
72,800	2,700	383	"
230,000	——	384	"
240,000	8,000	48,000	"
320,000	——	121,100	"
5,250,000	1,200,000	3,388,550	"
890,000	——	1,400,000	"
990,000	80,000	1,278,300	"
3,400,000	6,000	2,000,000	"
2,900,000	——	127,000	50
——	——	800,000	100
——	——	3,546,670	"
179,000	179,000	144,375	"
2,280,000	2,100,000	2,900,000	"
495,000	456,000	1,850,000	"
500,000	410,000	650,000	"
200,000	200,000	80,000	"
1,800,000	1,800,000	600,000	"
800,000	800,000	800,000	"
270,000	260,000	2,370,466	"
300,000	300,000	——	"
275,000	——	——	"
——	——	642,000	"

state of New York, where the comptroller is now clamoring for a tax on corporate indebtedness, the proceeds would fall far below the actual capacity of the corporations. The decisions of the Supreme Court prevent double taxation, it is true, but they do it so effectually as also to prevent just taxation. The situation would be intolerable.

The same difficulty applies to the taxation of bonds of foreign corporations held in the state. A recent case has decided that a state cannot impose upon a corporation chartered by another state, when paying in that other state the interest due upon bonds held by a resident of the first state, the duty of deducting from the interest so paid the amount assessed upon the bonds by a tax law of the first state.[1]

From the economic point of view, these decisions are indefensible. If the tax on capital stock is a tax on the corporation, then the tax on mortgage bonds is equally a tax on the corporation. Stock and bonds together represent the corporate property, for the value of the stock is diminished by the existence of the bonds. The bondholders, viewed from the economic standpoint, are no more creditors of the corporation than are the stockholders. They are co-proprietors, just as mortgagor and mortgagee are in economic fact co-owners of the land. It is, therefore, impossible to see any justification for taxing non-resident stockholders while exempting non-resident bondholders. The same rule should be applied to both classes, for their interests in the prosperity of the corporation are in this respect precisely the same. The original Pennsylvania decision which was reversed by the federal Supreme Court rested on an earlier case involving much the same question, known as Maltby's Case. And with all due deference to the Supreme Court, it must be stoutly maintained that to the student of political economy

Some of the results are very absurd: Railroad no. 4, although having \$230,000 bonds, paid a tax of \$1.92. Road no. 18, worth about the same amount, paid \$1,200.00. The last road but one paid no taxes at all. The road half of whose mileage was in the state paid nothing at all on its \$2,900,000 bonds.

[1] Railroad Co. *vs.* Pennsylvania, 153 U. S. 629.

the original Pennsylvania decision seems sounder than that rendered by the federal tribunal. In Maltby's Case the court uses the following language:—

> What would the plaintiff's [a non-resident] loan be worth if it were not for the franchises conferred upon the corporation by the commonwealth [of Pennsylvania], franchises which are maintained and protected by the civil and military power of the commonwealth. . . . It is on this ground that the legislature discriminates between corporation loans and private debts as objects of taxation. . . . *The loans and stocks of a railroad company resemble each other in many respects.* Both are subscribed under the authority of a special law, and *both are so far capital* that they are employed for the same general purpose. . . . Although loans and stocks are distinguishable for many purposes, yet the legislature committed no very great solecism in treating loans as taxable property within our jurisdiction. . . . Corporation loans, though in one sense mere debts, are, like moneys at interest, taxable as property.[1]

This is perfectly sound political economy, although it is not now the law of the United States.

It is remarkable that, in several cases decided since the leading case of the state tax on foreign-held bonds, the Supreme Court has applied to the relations between the federal government and foreign states a principle entirely different from that which it invoked in the case of the commonwealths. It has been held that the national tax imposed during the Civil War on the dividends, coupons and profits of transportation companies is an excise tax on the business, and that it is valid even though the dividends or interest are withheld from a foreign stockholder or bondholder.[2] Justice Field in a dissenting opinion showed the incongruity between these decisions and the earlier ones as applied to commonwealth laws. He said:—

[1] Maltby *vs.* Reading and Columbus Railroad Co., 53 Pa. State 140.

[2] Railroad Company *vs.* Collector, 100 U. S. 595 (1879); United States *vs.* Erie Railroad Co., 106 U. S. 327 (1882).

If the United States can do this, why may not the state do the same thing with reference to the bonds issued by corporations created under their laws? What is sound law for one sovereignty ought to be sound law for another.[1]

This protest, however, was in vain, and the legal status of the problem continues to be anomalous. The federal government can impose a tax on the total stock and bonds, or total dividends and interest of corporations, irrespective of the residence of the holders. The separate commonwealths, on the other hand, which are treated like foreign countries in the case of corporate stock or dividends, can impose a tax on only so much of the bonds or interest as are owned by, or due to, residents. This is of course illogical.

A peculiarly interesting complication arises in those commonwealths where the law of mortgage has been changed for tax purposes. One of the chief grounds of the decision in the Foreign-held Bond Case was that since the railroad lands on which the bonds and mortgages were issued lay in Pennsylvania, the non-resident bondholder had no property therein. Said Justice Field: —

The property in no sense belonged to the non-resident bondholder or to the mortgagee of the company. The mortgage transferred no title; it created only a lien upon the property. Though in form a conveyance, it was both in law and equity a mere security for the debt. The mortgagee has no estate in the land.

It would be interesting, if this were the proper place, to trace the law of mortgage through both the Roman and the English law, and to show that in each system the mortgagee originally had both possession and property; that in a later stage he had no property in the land but retained the possession; until finally he had neither property nor possession, but simply a lien.[2] Be that as it may, it is true that Justice

[1] 106 U. S. 335.

[2] For the Roman law of *fiducia*, *pignus* and *hypotheca*, see Hunter, *Roman Law*, pp. 262–276. For the development of the English law, see Digby, *An Introduction to the History of the Law of Real Property*, chap. v., § 5 (2).

Field correctly represented the American law on the subject. That the mortgagee has no estate in the land is the Pennsylvania law;[1] and similar cases have been decided in the same way in other commonwealths. Thus, in an Iowa case, a corporation mortgage held by a non-resident was declared non-taxable in Iowa because "the mortgagee has only a chattel interest. . . . The mortgage is personal property . . . and attaches to the person of the owner."[2] So also under the old constitution of California, a case of inter-municipal taxation was decided in the same way. A judgment of record in one county upon the foreclosure of a mortgage situated in that county, the owner of the judgment being the resident of another county, was held not taxable in the first county because "the thing secured by the mortgage is intangible and has no *situs* distinct and apart from the residence of the holder. It pertains to and follows the person."[3]

It will be seen that all these cases turn upon the point that the mortgage is personal property; but in California and in Massachusetts, as we know,[4] it has been provided that the interest of the mortgagee should be considered, for purposes of taxation only, as realty. This changes the whole situation and entirely undermines the foundation of the decision in the Foreign-held Bond Case. If the interest of the non-resident bondholder, *i.e.*, the mortgagee, is no longer personalty, it does not follow the person of the bondholder, but may be taxed by the commonwealth in which the corporation is situated. The taxation of non-resident bondholders must thus be assimilated in these states to that of non-resident stockholders, and the federal decision will therefore be applicable to one part, but inapplicable to another part, of the United States. It may even happen that the corporate prop-

[1] Rickert *vs.* Madeira, 45 Pa. State 463.

[2] Davenport *vs.* The Mississippi and Missouri Railroad Co., 12 Iowa 539.

[3] People *vs.* Eastman, 25 Cal. 603. See also State of Nevada *vs.* Earl, 1 Nevada State 397; State *vs.* Ross, 3 Zabriskie 517.

[4] *Supra*, p. 103. In California, however, this does not apply to railroads and other quasi-public corporations.

erty covered by the mortgage is situated in several different states, so that part of the bonds may be subject to one law, part to another. The ensuing complications may be easily imagined. It would be far better for the Supreme Court to abandon the whole contention and on purely economic grounds to reverse its decision. In assessing a tax on capital stock or bonded debt, it should be entirely immaterial whether or not some of the stockholders or bondholders live without the state. The residence of the security holder should have nothing to do with the taxation of the corporation.

If the tax is imposed not on the corporation but on the shareholders, non-resident stockholders would naturally escape, because outside the tax jurisdiction. In some cases, however, it is provided that corporations must then pay taxes for the non-resident stockholders.[1]

From one point of view there is indeed some force in the contention that the residence of the security holder should be considered. It may often occur that the stock and bonds of a corporation lying within one state may be owned by residents of another state. If the whole fortune of these individuals is invested in such securities, the second state would get no revenue at all if it exempted securities of taxed corporations. Yet the individuals certainly owe some duty to the state of their residence; their economic allegiance, so to speak, is partly due to the state where they live. On the other hand it is equally clear that the corporation owes a decided duty to the state where it is situated and where its earnings are secured. How is this conflict to be avoided?

The most desirable solution of the difficulty, as we have already intimated, would seem to be the division of the tax between the state of the corporation and that of the security holder. Each party possesses taxable faculty or ability within the borders of the respective states — the corporation where it earns its money, the security holder where he resides

[1] Md. Rev. Code, part viii., art. xi., § 87; N. J. Rev., 1877, p. 1199 (as to banks); Ore. Gen. Laws, 1872, chap. 57, art. 1, § 6.

and enjoys the benefit of government. For each state to levy the entire tax would be double taxation; hence, if one party is taxed, the other should be exempt. In order to obviate the complete loss of revenue to the one state, and to satisfy the conflicting claims, the principle of economic allegiance must be invoked, and each state must be permitted to tax that portion of the economic faculty that properly falls within this category. This of course must be arranged by interstate agreement. The plan has not yet been tried in any American state, because no serious attempt has yet been made to grapple with the difficulties; yet no final escape from the complexities of double taxation can be attained until some such method is adopted. But even though the proceeds ought to be so divided, the tax ought to be levied as a whole, entirely irrespective of the residence of the security holder. This part of the problem may be solved according to the system proposed by the Tax Conference of Pennsylvania and practised in some other states, like Illinois, Indiana and Connecticut; namely, by assessing the corporation on a valuation equal to the market value of the whole capital stock plus the entire bonded debt, with a provision that only so much of the capital shall be assessed as is economically within the state.

4. *Interstate taxation of receipts or income.* This phase of interstate double taxation presents far less difficulty. In regard to gross receipts the measure of faculty is very simple, *viz.*, the gross receipts from business done within the state. In the case of insurance companies this is fast becoming the general rule in this country. When the returns do not show the precise amount of the gross receipts, the laws often provide, especially in the case of transportation companies, that the proportion is to be ascertained by the ratio of mileage within the state to the total mileage; and this method has generally been upheld.[1] The question has some-

[1] 18 Wall. 208, 231. *Cf.* 92 U. S. 608; 125 U. S. 530; 45 Md. 384; 141 U. S. 18; 55 Fed. Rep. 206.

times arisen whether the word *mileage* is to be interpreted to mean miles of track or miles of line. The former is, however, the correct economic basis. In Wisconsin mileage has even been held to include side tracks.[1] The mileage principle has also been applied to street railway companies, in the assessment of lines within and without the city limits.[2]

The same arrangement is really applicable, as we have seen, to all corporations except transportation companies. The reason for the exception is that a tax on business transacted wholly within the state would result in a practical exemption of the larger part of railway earnings — that derived from, or in any way connected with, interstate transportation. As to other corporations, however, the gross earnings tax can be easily arranged so as to obviate double taxation.

If the gross earnings tax be discarded, as we have suggested, and if a tax on net receipts or income be imposed, how does the matter stand then? Strictly speaking, only so much of the income as is earned within the state should be assessed; but since it is exceedingly difficult to apportion the expenses of a large corporation among all its branches in different commonwealths, it would seem preferable to adopt some approximate standard by which the net receipts could be measured. As the most practicable and easily ascertained measure is gross receipts, the most approved method of taxing corporate income would be to assess that proportion of the total net income which the gross receipts within the state bear to the entire gross receipts. Such a system would present no difficulties, and would preclude all chance of double taxation of this kind.

We have thus far considered only the question of complications arising from international or interstate taxation. Of minor consequence, but still of sufficient importance to deserve mention, are the problems of intermunicipal double taxation. These are of minor consequence because, in the United States at least, there are but very few instances of

[1] 64 Wis. 130 [2] 74 Md. 405.

municipal or county taxes on the receipts, income or loans of corporations which do any business without the limits of the local divisions. On the other hand, we find local taxes on the total property and on the capital stock of corporations which have more than a purely local significance. The rules should be the same as those applied above to cases of interstate taxation. But so long as very few of the commonwealths accept these principles, it will scarcely surprise us to find that the local divisions almost completely ignore them. Thus in New York City, the home of many huge corporations of national importance, it is the common practice to assess for local purposes the entire capital stock of the corporation, irrespective of the question whether a portion of its property may not be situated, or whether its stock may not be employed or owned, outside of the confines of the city. This is manifestly a crude practice, whose injustice can be readily removed by pursuing the plan here laid down — *i.e.* by taxing corporations for local purposes only on their real estate. Ultimately, perhaps, if the local needs become more pressing, a proportionate share of the proceeds of the commonwealth corporation taxes may be distributed among the local divisions. In this way no possible complications could arise from intermunicipal double taxation.

What can we learn from Europe on this whole subject of interstate or intermunicipal double taxation? The only countries in which such interstate complications can arise are the federal states of Germany, Austria-Hungary and Switzerland. In two of these an attempt has been made to regulate the matter.

In Switzerland the constitution of 1874 imposes on the federal legislature the obligation of preventing double taxation, without attempting, however, to analyze or to point out the various forms of double taxation.[1] While several

[1] Art. 46: "Die Bundesgesetzgebung wird . . . gegen Doppelbesteuerung die erforderlichen Bestimmungen treffen." A translation of the Swiss constitution has been published as no. 18 of the *Old South Leaflets*, Boston, 1890.

decisions of the Swiss courts have definitely settled some of the simpler problems of duplicate taxation, the more subtle questions that interest us under this fourth heading have not yet been adjudicated to any extent. Beyond the principle that corporations, like natural persons, are taxable on their income and on their property by the canton where their chief office or establishment is situated, or where their business is conducted, no successful attempt has as yet been made by the federal legislature or courts to solve the problems here discussed.[1] A few of the cantons, however, have recently embodied in statutes the principle that only so much of the capital or income as is employed or received within the commonwealth should be taxable. Such, for instance, is now the law in Vaud, Ticino and Baselstadt.[2] In Bern the same principle is applied to intermunicipal taxation.[3] In Uri the taxable property and profits are calculated in proportion to relative mileage.[4] In Neuchâtel foreign cor-

[1] Zürcher, *Kritische Darstellung der bundesrechtlichen Praxis betreffend das Verbot der Doppelbesteuerung* (Basel, 1882), pp. 88–93; Schreiber [same title], p. 259. *Cf.* also, in general, Speiser, *Das Verbot der Doppelbesteuerung* (Basel, 1886).

[2] In Vaud, all individuals as well as private corporations or societies, "sont soumis à l'impôt pour tout le capital mobilier affecté au service de leur activité dans le canton." Loi d'impôt sur la fortune mobilière et sur la fortune immobilière, du 21 août, 1886, chap. iii., art. 12. Printed in Schanz, *Die Steuern der Schweiz*, v., p. 387; *cf.* also, iv., p. 128. — In Ticino, "le persone, le ditte commerciali, le società o gli enti morali in genere, che, non avendo il loro domicilio o la loro sede nel Cantone, vi tegono stabilimento, succursale, agenzia, rappresentanza, o vi esercitano un' industria, oppure vi poseggono beni o rendite . . . sono tenuti al pagamento dell' imposta, in ragione della sostanza e della rendita che hanno nel Cantone." Legge sull' imposta cantonale (April 28, 1890), art. 14. In Schanz, v., p. 462. — In Baselstadt, "bei Gesellschaften welche neben der Niederlassung im Kanton auch eine solche ausserhalb des Kantons besitzen, tritt eine dem Umfange der auswärtigen Niederlassung entsprechende Minderung des Steuerbetrags ein." Gesetz betreffend die Besteuerung der anonymen Erwerbsgesellschaften, vom 14 Oktober, 1889, § 4. In Schanz, v., p. 50.

[3] "Bei Unternehmungen, die in verschiedenen Gemeinden ihr Gewerbe ausüben, ist die Steuer nach Verhältniss der Ausdehnung des Geschäfts an diese Gemeinden zu entrichten." Gesetz über das Steuerwesen in den Gemeinden, vom 2 Sept., 1867, § 7. In Schanz, v., p. 88.

[4] Uri, Steuergesetz vom 10 Mai, 1886, art. 13. In Schanz, v., p. 376.

porations are taxable only for the profits earned within the commonwealth.[1] In Appenzell it is provided that corporations should pay the income tax in the place where the business is carried on, but in such a manner as to avoid double taxation.[2] The recent law of Ticino is most interesting for the further reason that it also imposes a tax on all corporate loans, but allows the corporation to deduct the tax only from the interest on the bonds owned within the canton.[3] Foreign-held bonds thus escape taxation in the hands of the individual holder except by the state of the owner's residence. It will be observed that the custom in Ticino is thus the exact reverse of the practice in the United States.

In Germany, the conditions are much the same. In 1870, an imperial law was enacted which forbade in express terms double taxation arising from interstate complications. This law provided that individuals should be taxed by the state of their domicile, and that real estate should be taxable by the state of its location. The only clause affecting corporations prescribed that the occupation as well as the income from the business could be taxed only by the state where the business was carried on.[4] The commission which drafted the law, however, evaded the main question by asserting that the exact proportion of the corporate business or income taxed by any one state must depend on "the particular

[1] "Les sociétés anonymes . . . sont soumises au même impôt pour les ressources que leur procurent les affaires faites dans le pays." Loi sur l'impôt direct du 18 octobre, 1878, art 6, § 3. In Schanz, v., p. 219.

[2] "Immerhin unter Vermeidung von Doppelbesteuerung." Vollziehungsverordnung über die Ausführung von Art. 16 der Verfassung betreffend das Steuerwesen (April 5, 1880), art. 6. In Schanz, v., p. 26.

[3] The corporations "sono tenuti al pagamento dell' imposta . . . sull' importo complessivo delle obbligazioni al portatore da loro emesse." But the law contains this further provision: "Non saranno colpiti dall' imposta i capitali [including the bonds] di cui . . . ove il contribuente dimostri che ciò costituirebbe una doppia imposta." . . . Arts. 15 and 3, § 3 of the law of 1890. In Schanz, v., pp. 460, 462; *cf.* iv., p. 282.

[4] Reichsgesetz wegen Beseitigung der Doppelbesteuerung; vom 13 Mai, 1870, § 3. Reprinted in Meitzen, *Die Vorschriften über die Klassen- und klassifizierte Einkommensteuer in Preussen*, no. 6.

form of the actual conditions."[1] This has settled nothing, and the matter remains, as before, a subject for the separate states to regulate.

Several of the German commonwealths have now adjusted the difficulties in very much the same way that has been adopted or proposed in various American states. Thus the Baden law provided that only so much of the corporate income shall be assessed as is proportional to the amount of capital employed within the state.[2] So the earlier Prussian law provided that the taxable net income of railroads which lie partly in other states should be estimated by the proportion of gross receipts within the state, and that this again should be calculated according to mileage.[3] The Prussian local tax law of 1885 measures the proportion of corporate income or net profits due to each tax district by the share of gross receipts in the case of banks and insurance companies, and by the share of expenses for salaries and wages in the case of transportation companies.[4] The income-tax law of 1891 states that only that part of the net receipts actually earned in Prussia shall be taxable.[5]

The tendency therefore seems to be the same in all countries. Whether the tax be imposed on property or on income, the law should be applicable to both domestic and foreign corporations; and while no deduction should be made for non-resident holders of stock or bonds, only so much of the property or income should be assessed as is employed or received within the state. Since an exact standard is unattain-

[1] "Dass die Entscheidung immer von der besonderen Gestaltung der thatsächlichen Verhältnisse abhängen werde." *Cf.* Clauss, "Das Reichsgesetz wegen Beseitigung der Doppelbesteuerung," in Schanz's *Finanz-Archiv*, v., pp. 138–197, especially p. 179.

[2] Badisches Einkommensteuergesetz von 20 Juni, 1884, art. 5, lit. B. In *Finanz-Archiv*, iii., p. 368.

[3] Law of March 16, 1867, § 9. For the judicial decisions and rescripts on this point, see Clauss, *op. cit.*, p. 181.

[4] Communalsteuernothgesetz von 27 Juli, 1885, § 7. Printed in *Finanz-Archiv*, iii., pp. 174–193, together with an explanatory article by Secretary Herrfurth.

[5] Einkommensteuergesetz von 24 Juni, 1891, § 16.

able, it is advisable to use the approximate test of relative mileage in the case of transportation companies and of relative gross receipts in the case of other corporations.

V. *Taxation of the Corporation and of the Security Holder.*

We come finally to the fifth and most important division in the subject of duplicate taxation — the taxation of the corporation and of the shareholder or bondholder. The question is: If we tax the corporation, shall we also tax the individual who owns the stock or bonds of the corporation? Is this double taxation? Is it unjust?

Let us first discuss the actual practice both here and abroad. In the United States the legal conditions are absolutely lacking in uniformity. In some states the tax on the corporation is declared to be a tax on the shares, which are accordingly exempted from assessment. Thus in California, the statute declares that "shares of stock possess no intrinsic value over and above the actual value of the property of the corporation for which they stand," and that to tax both corporation and shareholder is double taxation.[1] In Arizona, we find exactly similar language used.[2] In most of the other commonwealths, also, shares of stock in the hands of individuals are exempt when the corporation itself is taxed, although the reason of the rule is not always expressly stated as in the cases just cited.[3]

On the other hand, the statutes in North Carolina, Wyoming and Iowa (except for manufacturing corporations) and the judicial decisions in Illinois, Iowa, Louisiana and Maine are to the contrary effect.[4] This was formerly true

[1] Cal. Code, § 3608, new sec. March 7, 1881; *cf.* Burke *vs.* Badlam, 57 Cal. 594; 21 Fed. Rep. 539; 22 Fed. Rep. 602.

[2] Ariz. Code, § 2633.

[3] For details, see the chapter in Pepper and Lewis, *A System of the Law of Private Corporations*, mentioned above on p. 137.

[4] Porter *vs.* Railroad Co., 76 Ill. 561; Danville Banking Co. *vs.* Parks, 88 Ill. 170; Cook *vs.* Burlington, 59 Ia. 251; New Orleans *vs.* Canal Co., 32 La. Ann. 51; Cumberland Marine Railroad *vs.* Portland, 37 Me. 444.

also in Indiana, Pennsylvania and Tennessee.[1] In some of these cases it has been held that "the tangible property of a corporation and the shares of stock are separate and distinct kinds of property under different ownership; the first being the property of the corporation and the last the property of the individual stockholder." Taxation of both corporation and shares of stock is hence pronounced neither duplicate nor unjust taxation, even though the shares of stock have no value save that which they derive from the corporate property and franchise.[2] In other cases again, it has been held that even though the taxes amount to double taxation, they are not unconstitutional. This, however, is true only in those states which admit double taxation, as Pennsylvania formerly did, even though it be confessedly unequal.

Other commonwealths, again, take a less logical middle ground. In the case of certain corporations they do not permit taxation of both shares and corporation; in the case of other corporations they do not object to this simultaneous taxation. In the case of national banks, as we know, the taxation of the corporation itself is made impossible by federal law. Most of the states, therefore, tax only the individual shares, although they collect the tax through the corporation.[3] In many cases this system has been extended to other banks besides national banks. A few commonwealths (Delaware, Georgia, Kansas and North Carolina) pursue this method with regard to all corporate shares in general, and collect the tax from the corporation.[4] In

[1] 15 Ind. 150; 49 Pa. State 526; 66 Pa. State 77; 47 Pa. State 106. But it has been recently held in Pennsylvania that double taxation will not be supported except by express enactment. 156 Pa. State 488; 151 Pa. State 265 and 276; 139 Pa. State 612.

[2] So also in Switzerland this simultaneous taxation has been upheld on the strictly juristic ground that the corporation and the shareholder are distinct persons. See Speiser, *Das Verbot der Doppelbesteuerung*, and Roguin, *La Règle de Droit* (Lausanne, 1889), 141 and *passim*.

[3] See *supra*, pp. 148, 149.

[4] Del. Laws, 13, chap. 393; Ga. Code, sec. 815; Kan. Comp. Laws, chap. 107, sec. 6; N. C. Machinery Act of March 11, 1889, sec. A 6.

a few others, including Iowa, Kentucky and Vermont, the prohibition of simultaneous taxation of both shareholder and corporation applies only to definite classes of corporations.[1] In Ohio it is true only of domestic corporations. In Massachusetts domestic corporations are taxed and the individual shareholders are exempt as regards all dues except those for school-district and parish purposes.[2]

The decisions of the United States Supreme Court are somewhat conflicting. The earlier cases seem to uphold simultaneous taxation of corporation and of shareholder. In a late case, however, the court asserts that double taxation is never to be presumed; and that, although the commonwealths have an undoubted right to levy such taxes, in the absence of a special statutory provision the presumption is against such an imposition.[3] On this point, accordingly, we find an absolute contradiction of theory.

In a cognate matter there is a still greater diversity of practice. Some commonwealths, as we have just seen, tax the stockholders on the full value of their shares, irrespective of the question whether the corporation has been taxed or not. In other states, however, only a portion of the value of the shares is taxable. Thus in Louisiana, Minnesota and Nebraska, in the assessment of shares of stock to the holders, a proportionate part of the value of the real and personal corporate property taxed within the state is deducted from each share.[4] In New Hampshire and Tennessee, a proportionate part of the real

[1] In Iowa the prohibition applies only to manufacturing companies, Acts 18th Gen. Assembly, chap. 57, §§ 1, 2; in Kentucky to turnpike, gas, telegraph, telephone, express, street-railway and toll-bridge companies, Revenue Law of 1886, chap. 1223, art. iv., § 8; in Vermont to railroads, Rev. Laws, sec. 270.

[2] Mass. Pub. Stat., chap. xi., sec. 4.

[3] Tennessee *vs.* Whitworth, 117 U. S. 136, 137; also, New Orleans *vs.* Houston, 119 U. S. 265. For the earlier cases, see Van Allen *vs.* Assessors, 3 Wall. 573; The Delaware Railroad Tax Case, 18 Wall. 230; Farrington *vs.* Tennessee, 95 U. S. 686; Sturges *vs.* Carter, 114 U. S. 511.

[4] La. Acts of 1888, no. 85, sec. 27; Minn. Gen. Stat., chap. xi.; Neb. Act of March 1, 1879, sec. 32.

estate actually taxed is deducted from each share.[1] In Rhode Island, a proportionate part of the real estate and machinery is deducted.[2] In Maine, a proportionate part of the machinery, goods manufactured or unmanufactured, and real estate locally taxable is deducted.[3] Finally, in New York, the statute (which applies, however, only to state and national banks) provides for the deduction of the assessed value of the real estate.[4] In all these cases only the property actually taxable within the state is deducted. In Vermont, on the other hand, in the case of manufacturing companies the value of the corporate realty and personalty, and in the case of all other corporations the value of the realty, is deducted whether the property be located or taxable within or without the commonwealth.[5]

A somewhat analogous question is that of the taxation of the shares of foreign corporations in the hands of individual residents. All those states which, as we have seen, declare it to be justifiable to tax both corporation and shareholder, of course do not hesitate to tax the shares held by residents, even though the foreign corporation itself be taxed. There is here, therefore, no discrimination between domestic and foreign corporations. The other states which declare the simultaneous taxation of corporation and shareholder to be duplicate taxation, may be divided into two classes. Some of them exempt the shares held by residents in foreign corporations, but only when the foreign corporations themselves are actually taxed by the state of their residence. This is the rule in New York, in almost all of New England and in a few other states, like California, Louisiana and New Jersey.[6]

[1] N. H. Gen. Stat., chaps. 53–55; Tenn. Laws, 1868–69, chap. 9, sec. 9.

[2] R. I. Pub. Stat., chap. 43, sec. 12.

[3] Me. Rev. Stat., tit. i., sec. 14, § 3.

[4] N. Y. Laws of 1866, chap. 761; Laws of 1882, chap. 409, § 312. *Cf.* People *vs.* Commissioners of Taxes, 69 N. Y. 91.

[5] Vt. Rev. Laws, tit. 9, chap. 22, sec. 288. *Cf.* on this point, Moore, "Corporate Taxation," in *American Law Review* for 1884, p. 771. Moore's statements are not entirely accurate.

[6] Hoyt *vs.* Commissioners, 23 N. Y. 224 (1861); N. H. Gen. Laws 1878, chap. 53, sec. 6; Vt. Rev. Stat., tit. ix., chap. 12, sec. 270; R. I. Pub. Stat.,

Some states, however, like Massachusetts, make a distinction between foreign and domestic corporations, exempting the shareholders of domestic corporations (or taxing them only through a simple tax on the corporation itself), but assessing the shareholders of foreign corporations on their shares. This practice has given rise to considerable controversy;[1] but from the standpoint of justice in taxation it can be defended only to a very limited extent. According to the principle of relative economic interests, the shareholder of a foreign corporation is indeed under a certain obligation to support the state of his residence. The proper way to satisfy the conflicting claims is, however, to have the foreign state, which taxes the corporation, divide the tax according to some agreement with the state where the stockholder resides. To tax the shareholder when the foreign state already taxes the corporation seems inadmissible; while entirely to exempt the shareholder is unfair to the state of his residence. Some *modus vivendi* ought to be arranged; but so long as it does not exist, the New York rule should be followed.

Such is the situation in regard to shares of stock. The same question can, of course, arise in reference to mortgage bonds. As regards the simultaneous taxation of corporate property and the individual bondholder, the disagreement is less profound only because corporate loans are, as we know, rarely taxed. In the one commonwealth, Connecticut, where certain corporations pay what has been pronounced a property tax on the value of their stocks and bonds, it has been held not to be double taxation to assess the individual bondholder as well as the corporation.[2] Yet

chap. 42, sec. 10; N. J. Revis. 1877, p. 115, sec. 64. *Cf.* Smith *vs.* Ramsey, 25 Vroom, 546 (1893); Lockwood *vs.* Weston, 61 Ct. 211 (1891); City of San Francisco *vs.* Mackey, 22 Fed. Rep. 602.

[1] This has been the law since 1836. But up to 1866 taxes paid on Massachusetts real estate and machinery by the foreign corporation were deducted from the tax on the shareholder. Mass. Rev. of 1836, chap. 7, secs. 2, 4; Dwight *vs.* Boston, 12 Allen 316. *Cf.* Crocker, *The Injustice and Inexpediency of Double Taxation*, 1892; R. H. Dana, *Double Taxation Unjust and Inexpedient*, 1892.

[2] Bridgeport *vs.* Bishop, 33 Conn. 187.

Pennsylvania and Maryland come to the opposite conclusion, so far as the bonds in these commonwealths are taxable only to the corporation and not to the individual bondholder;[1] for in these states neither stockholder nor bondholder is liable. The federal Supreme Court virtually accepts the same principle in deciding that a tax on the bonds is a tax on the bondholder,[2] the corporation being used merely as a convenient means of collecting the tax. It may be confidently asserted, therefore, that so soon as the taxation of corporate loans becomes as general as is now the taxation of corporate stock, we shall be confronted by precisely the same difficulties.

If we turn to Europe, we shall find a still greater diversity of practice. Of the European countries, Switzerland is the only one in which some of the cantons still tax corporate property or capital stock; and in Switzerland the condition is just as chaotic as with us.[3] Thus one set of cantons (Glarus, Grisons, Baselstadt, Aargau and Ticino) formerly taxed only the shareholder.[4] The intercantonal complications, however, soon assumed important proportions; for it frequently occurred that the great majority of the shareholders resided in a different canton from the home of the corporation, to the manifest detriment of the public revenue in the latter. Owing to this fact, the above system has now been abandoned by all the cantons except Glarus.

A second set of cantons, which tax the corporate property and income, deduct the shares, dividends or interest in the

[1] Pa. law of June 30, 1885, § 4; Md. Rev. Code, art. xi., sec. 97. Before the corporation-tax law of 1880, the same principle applied to all corporations in New York.

[2] State Tax on Foreign-held Bonds, 15 Wall. 300.

[3] *Cf.* in general, Schanz, *Die Steuern der Schweiz*, i., pp. 90–99; and Zürcher, *Kritische Darstellung betreffend das Verbot der Doppelbesteuerung*, pp. 36–41.

[4] This was true in Grisons from 1871 to 1881; in Baselstadt up to 1879; in Aargau to 1885; in Ticino to 1890. See the respective laws in Schanz, *op. cit.*, iii., p. 247; ii., p. 40; v., p. 4, § 20; iv., p. 281. For Glarus, see *ibid.*, v., p. 175.

hands of the security holders of domestic corporations from this taxable property or income. Such is the law in Schaffhausen, Bern, Vaud, Aargau and Uri,[1] and is the practice in Baselstadt, Schwyz and Zug.[2] The security holders of foreign corporations are, however, not exempted from taxation. Grisons, moreover, has the curious provision that while corporations are taxed directly, only the shareholders of domestic corporations are exempt, the bondholders of both domestic and foreign corporations being taxable equally with the corporation.[3] In some of the above cantons, as in Uri, Bern and Aargau, the security holders are exempt only from commonwealth taxes, but are liable for local burdens.[4] It is the same system, it will be observed, as in Massachusetts.

A third set of cantons do not shrink from double taxation, but tax both corporation and shareholder. Such is the law in Baselstadt and Neuchâtel.[5] On this point the decisions of the Federal Council are contradictory.[6] Finally, a fourth

[1] Schaffhausen, Steuergesetz vom 29 Sept. 1879, arts. 9 and 10, in Schanz, v., p. 259; ii., p. 169; Bern, Vollziehungsordnung, vom 22 März, 1878, § 3, in Schanz, v., p. 83; Vaud, loi d'impôt sur la fortune mobilière du 21 août, 1862, art. 6, in Zürcher, *op. cit.*, p. 38, *cf.* Schanz, iv., p. 158 (true only to 1886); Aargau, Grossrätliche Verordnung über den Bezug der direkten Staats- und Gemeindesteuer, vom 26 November, 1885, § 7, in Schanz, v., p. 15; Uri, Steuergesetz vom 10 Mai, 1886, art. 5, in Schanz, v., p. 375.

[2] For these cantons, see the judicial decisions in Zürcher, *op. cit.*, p. 38.

[3] Graubünden, Steuergesetz vom 28 August, 1881, § 16; in Schanz, v., p. 192.

[4] See the respective provisions in Schanz, v., p. 375, art. 5; 88, § 7; 15, § 7; and 19, § 18.

[5] Bern, Gesetz betreffend die direkten Steuern, vom 31 Mai, 1880, §§ 1, 8; and Gesetz betreffend die Besteuerung der anonymen Erwerbsgesellschaften, vom 14 Oct., 1889, § 1; in Schanz, v., pp. 41, 43, 49; Neuchâtel, Loi sur l'impôt direct du 18 Oct., 1878, art. 5 and art. 6, § 3; in Schanz, v., pp. 218, 219. Schanz, i., p. 95, also includes Zug in this class, but erroneously, as appears from the official decision quoted in Zürcher, *op. cit.*, p. 38.

[6] See the several cases in Schreiber, *Verbot der Doppelbesteuerung*, pp. 199–202. He opposes double taxation. On the other hand, see Meili, "Rechtsgutachten über die Besteuerung der Aktiengesellschaften," in the *Zeitschrift für schweizerische Gesetzgebung*, v., p. 489. See also Zürcher, *op. cit.*, p. 40.

set — and this seems the growing tendency in Switzerland — seek to divide the tax between corporation and shareholder. Thus Geneva taxes the corporation on its realty and the shareholder on his shares; but does not permit the shareholder to make a proportionate reduction for the corporate realty already taxed, as is the case in New York, New Hampshire and Tennessee.[1] Appenzell taxes the shareholders on the market value of their shares, but the corporations only on their reserve funds.[2] In Zürich, the shareholders are taxed on their shares; the corporations on their reserve fund and income in excess of five per cent of the capital. The income below five per cent is not taxed because it is supposed to be hit by the tax on the shareholders. For purposes of local taxation, however, the shareholders are assessed on their shares, but the corporations pay only on their realty and on a proportionate part of their reserve funds.[3]

The recent "draft of a federal law on double taxation" sought to divide the tax between corporation and shareholder in a new way. The stockholder was to be assessed by the place of his domicile on the market value of his shares up to the amount actually paid or on the dividends up to five per cent; while the corporation was to pay only on the value of the capital or dividends above this figure.[4] Although this particular draft failed of adoption because of the jealousy of the individual cantons at the supposed infringement of their state rights, the principle has nevertheless been accepted by a single commonwealth, — Vaud. In this canton all shares which

[1] Genève, Loi générale sur les contributions publiques, du 9 novembre, 1887, arts. 300, 324; in Schanz, v., pp. 151, 155.

[2] Vollziehungsverordnung über die Ausführung von Art. 16 der Verfassung betreffend das Steuerwesen (April 5, 1880), arts. 5, 6. Schanz, v., p. 26.

[3] Gesetz betreffend die Vermögens-, Einkommen- und Aktivbürgersteuer vom 24 April, 1870, §§ 2, 4; Anleitung betr. das bei der Selbsttaxation . . . zu beobachtende Verfahren, § 6; Gesetz betreffend das Gemeindewesen, § 137, d, e. Schanz, v., pp. 423, 424, 431, 439; ii., p. 435. *Cf.* Zürcher, *op. cit.*, p. 39.

[4] Bundesgesetzentwurf vom 6 März, 1885. In Schanz, i., p. 96.

stand above par and all bonds which pay more than four per cent interest are assessable to the individual owners at their par value. The corporations are assessed only on the surplus above the capital stock, *i.e.* the reserve and sinking funds and other sums earned during the year.[1] Such a clumsy method is not likely to be adopted in this country. On the other hand, in St. Gallen the stockholder is taxed on his shares, the corporation on its income in excess of four per cent interest on the capital.[2] We see, then, that Switzerland has no settled practice.

In the other chief European countries neither general property nor capital stock is taxed. The whole system is that of the taxation of incomes. The same questions arise as to the taxation of corporate profits and of shareholders' or bondholders' income.

In England, the income tax payable on annual profits or gains according to schedule D of the income tax is advanced by the corporation, and is deducted by it from the dividends or interest due the security holders, who are then to that extent exempt from the income tax.[3] In Austria the facts are similar to those in England.[4] In Italy, the law requires the income tax to be paid by the corporation, but does not interfere with the adjustment of the tax between the company and the shareholders. Nothing

[1] "Les actions et parts de sociétés qui ont leur siége en Suisse et dont le cours à la bourse est supérieur à leur valeur nominale ou qui rapportent un intérêt supérieur au 4 per cent de cette valeur, sont comptées dans la fortune mobilière du porteur ou des créanciers pour leur valeur nominale seulement. . . . L'avoir net (réserves et amortissements compris) des sociétés . . . est compté dans la fortune mobilière de ces sociétés pour tout ce qui excède le capital social." Loi d'impôt sur la fortune mobilière, *etc.*, du 21 août, 1886, art. 11. Schanz, v., p. 387; iv., p. 158.

[2] Gesetz über die Einkommensteuer, sowie über die Besteuerung der anonymen Gesellschaften (1863), art. 5; Verordnung über Besteuerung der anonymen Gesellschaften vom 28 Jan., 1867, arts. 4, 11. Schanz, v., pp. 309, 311.

[3] Ellis, *A Guide to the Income Tax Acts*, pp. 78–112.

[4] Wagner, "Direkte Steuern," § 103, in Schönberg, *Handbuch der politischen Oekonomie*, iii., p. 307. Wagner's discussion of these points is fragmentary and inconclusive.

would prevent the corporation from deducting the tax from the dividends; but in fact, it is the custom for the corporation to charge the tax to expense account, with the same result for the shareholder. The latter is not assessable on his dividends because the law expressly forbids double taxation of this kind.[1] As regards bondholders the companies are required to pay the tax on coupons, with a right to recoup from the bondholders.[2] The companies generally do not deduct anything from the coupons, but, as with dividends, charge the tax to expense account. In this case it would seem as if the stockholders were liable for the tax, since, strictly speaking, it would have to come ultimately out of the stockholders' dividends, and not out of the bondholders' interest, which is legally fixed. In actual practice, however, this distinction is not observed. The bondholders, moreover, are not assessable if the corporation has paid the tax. In France, the tax *sur le revenu des valeurs mobilières*, so far as it applies to the dividends or interest of corporate securities, may be primarily collected from the company and then deducted by it from the sums due the security holders, as in England; or the tax may be assumed directly by the companies,[3] as in Italy.

In Germany, every possible plan has been tried, without reaching any definite or uniform conclusions. The matter is, moreover, further complicated by the fact that corporations like individuals must pay a business tax (*Gewerbesteuer*), somewhat akin to licenses or occupation

[1] "Ne saranno soltanti eccettuati [in the taxable income] i redditi che per disposizione della presente legge siano già una volta assoggettati all' imposta in essa stabilita." Legge per l' imposta sui redditi di ricchezza mobile, art. 8, § 2.

[2] ". . . Le società anonime dichiareranno non solo i redditi propri, ma eziando . . . gli interessi dei debiti da loro contratti e delle obbligazioni da loro emesse, e pagheranno direttamente l' imposta relativa anche a questi ultimi redditi, rivalendosene sui loro assegnatori e creditori mediante ritenuta." *Ibid.*, art. 15.

[3] Tanquérey, *Traité . . . de l'Impôt sur le Revenu des Valeurs Mobilières*, pp. 143–150; Vignes, *Traité des Impôts en France*, i., pp. 405–409; Kauffmann, *Die Finanzen Frankreichs*, pp. 288, 291.

taxes in the Southern states of the American Union. In a number of German states (Oldenburg, Brunswick, Gotha, Schaumburg-Lippe, Waldeck and Lübeck) the corporations pay no income tax, but the shareholders and bondholders are taxed.[1] In other states, like Saxe-Weimar, Lippe-Detmold, Bremen and Hesse, the corporations are assessed, but the shareholders and bondholders are exempt.[2] Even in these commonwealths, however, the definitions of corporate net income do not tally. In most of the remaining states, like Prussia, Saxony, Baden, Bavaria, Würtemberg, Mecklenburg, Anhalt and the other minor commonwealths, both corporation and security holder are taxed — the corporation on its income or business, the individual on his income from the corporate security.[3] In one case (Baden) the same income is taxed four times — that is, the corporation pays a business tax (*Gewerbesteuer*)

[1] *Cf.* the details in Antoni, "Die Steuersubjecte im Zusammenhalte mit der Durchführung der Allgemeinheit der Besteuerung nach den in Deutschland geltenden Staatssteuergesetzen," in *Finanz-Archiv*, v., pp. 916–1033, especially 1010.

[2] Sachsen-Weimar, Gesetz über die allgemeine Einkommensteuer, von 19 März, 1869 [with amendments of 1874, 1877 and 1880], §§ 48 and 4. Printed in *Finanz-Archiv*, ii., p. 932. — Lippe-Detmold, Gesetz die Klassen- und klassifizierte Einkommensteuer betreffend, von 1868 [with amendments of 1882 and 1885], §§ 1, 7. — Bremen, Einkommensteuergesetz von 17 Dez., 1874, § 5. — Hessen, Gesetz von 1884, die Einführung der Einkommensteuer betreffend, arts. 4, 19. In *Finanz-Archiv*, ii., pp. 383–434. For Hesse in particular, see Schanz, "Die direkten Steuern Hessens und deren neueste Reform," *Finanz-Archiv*, ii., pp. 235–529. Also Conrad's *Jahrbücher*, xii., p. 40.

[3] Sachsen, Einkommensteuergesetz von 1878, § 4. — Bayern, Einkommensteuergesetz von 1881, art. 1, § 15. In Seisser, *Die Gesetze über die direkten Steuern im Kgr. Bayern*, i., 158. — Württemberg, Gesetz von 1872, art. 1, § 3. In *Sammlung württembergischer Steuergesetze* (1883). — Mecklenburg, revidiertes Contributionsedict von 1874, §§ 13, 45. — Baden, Gesetz von 1884, die Einführung einer allgemeinen Einkommensteuer betreffend, art. 5. In *Finanz-Archiv*, ii, pp. 361–394. *Cf.* Philippsberg, *Gesetz über die direkten Steuern in Baden* (1888). — Anhalt, Gesetze von 1886, die Einführung einer Einkommensteuer . . . betreffend, §§ 2, 4. *Cf.* Schanz, "Die Steuern im Herzogthum Anhalt, ihre Entwickelung und neueste Reform," *Finanz-Archiv*, iv., pp. 961–1070, especially 1016. For Prussia, see Einkommensteuergesetz von 1891, §§ 12 b, 14.

and an income tax, while the individual shareholder or bondholder pays not only an income tax but also a tax on the interest of his capital invested in the bonds or stock (*Kapitalrentensteuer*).[1] In the original draft of the bill to reform the Prussian law, this same quadruple taxation was proposed;[2] but its injustice was so manifest that the project failed. It was also proposed in Hesse, but without success. Baden, therefore, is the only state in the world which can pride itself upon assessing the same object four times.

We see, thus, that in Europe there is no settled practice at all, although the tendency seems to be to tax the corporation and to exempt the individual on his income from corporate investments. Is this the correct policy? Is it true that in taxing the corporation, whether on property or on income, we are taxing the individual holder of the shares or bonds?

This brings us to the pith of the question. What is the incidence of the corporation tax? Where does the burden really fall? This question has never yet received adequate attention.[3]

VI. *Incidence of the Tax.*

It is generally assumed that a tax on a corporation is a tax on the shareholder or bondholder. But as has already been pointed out,[4] a distinction must be drawn between the original holder and the recent purchaser of corporate securities. Under certain circumstances the tax is not borne by the purchaser of new corporate securities, but falls entirely on the original holder of the old securities issued before the tax was imposed. If a corporation is taxed on its income,

[1] *Finanz-Archiv*, ii., p. 320. *Cf.* Lewald, "Die direkten Steuern in Baden," in *Finanz-Archiv*, iii., p. 350.

[2] Einkommensteuergesetzentwurf von 1883.

[3] The nearest approach to a discussion of this question is to be found in Helferich, "Ueber die Einführung einer Kapitalsteuer in Baden," in Tübinger *Zeitschrift für die gesammte Staatswissenschaft*, 1846, pp. 291–324, especially 315 *et seq.*

[4] *Supra*, p. 105.

and if no similar tax is levied on other corporations or on other securities, the stock will fall in value and the new purchaser who buys at the reduced price really buys free of tax. The amount of the tax is thus discounted in the depreciation of the security. With the lapse of time and the fluctuations in the market the original holders all disappear. Hence at any given time an exclusive income tax levied only on the corporation and not on the shareholder does not affect any one except the few original holders who bought before the imposition of the tax. It is only a question of a few decades until this class of original holders disappears entirely.

As to bondholders, the argument is precisely the same if the corporation is empowered to deduct the tax from the interest. The lower rate of interest is discounted in the depreciation of the bond, so that the new purchaser loses nothing. But in those cases where, as we have seen, the tax is borne by the corporation and not deducted from the interest,[1] the bondholder does not suffer, except in so far as it somewhat lessens the security of the mortgage.

Of course this is more or less true of all new taxes under certain conditions. By virtue of what is called the capitalization of taxation a new tax affects the original owner of the taxable article more than the new purchaser. In the case of direct taxes the original holder is injured while the future purchaser discounts the tax in the depreciation of the article. In the case of indirect taxes the reverse is true, for the effect of the tax is to increase the price. The lucky owner who holds the commodity before the imposition of the tax reaps the benefit of the rise in price. The point which is usually overlooked, however, is the question whether

[1] During the Civil War, when a federal tax was imposed on the coupons and dividends of certain corporations, many corporations declared these "free of tax," and refused to withhold the amount from the sums due to the bondholders and stockholders. They simply assumed the tax and charged it to expense account, asserting that while the law authorized, it did not direct, them to withhold the tax. See *Internal Revenue Record*, vol. i. (1865), p. 153. — The practice was thus the same as in Italy to-day.

the new tax is general or partial. If the direct tax applies to all subjects in the class and to all classes, then the new purchaser is taxed equally with the original owner. For if the tax is general there will be no depreciation in value. It is only when the tax is partial, assessing some articles in the class more than others, that it will virtually be capitalized, and that a decrease in the value of the overtaxed article will ensue.

If we apply this principle to the corporation tax, we reach the following results: If the corporation tax simply forms a part of a general scheme of income taxation, as in England or in Italy, the shareholder must indeed be exempted. Since the tax affects the interest on all investments, not simply on corporate securities, the investor, whose interest was cut down, will not find any non-taxable securities of equal desirability from which he can obtain the original rate of interest. In such a case, therefore, the tax on the corporation is a tax on the investor. To tax both corporation and individuals on their income would really be double taxation. On the other hand, if the corporation tax is partial — *i.e.* if only corporate and not other securities are taxed, as in France, or if only a few classes of corporations are taxed — then the taxation of the corporation is not sufficient to reach the purchaser. He will practically escape, because the freedom of investing in non-taxable securities will enable him to discount the tax in the price he pays. To tax both corporation and shareholder in such a case is not unjust or double taxation. To tax the corporation alone would in reality exempt the shareholder who purchased after the tax was imposed. An additional tax on the shareholder would, thus, not be double taxation.

Thus far we have been discussing the incidence of the corporation tax in a scheme of income taxation. How does the matter stand in the case of a property tax?

The principle is the same. Let us assume that in addition to the corporation tax a general property tax is actually

levied on all individuals. The corporation would then pay the first tax, and the individuals would pay the second tax upon corporate shares and bonds. This would indeed be duplicate taxation, but only on the assumption that the corporation tax is imposed on all corporations in general, and that the property tax is actually assessed on all kinds of property. In such a case it would be unjust to tax both corporation and shareholders. This is the assumption made by most of the American commonwealths, which, as we have seen, generally exempt the shares when the corporate property or franchise is taxed.

The assumption, however, is not absolutely correct. In the first place, only special classes of corporations are usually taxed. Secondly, the general property tax we know to be general only in name, for by far the larger part of personal property or of investments in the hands of individuals escapes taxation. Under these conditions the matter is entirely different. The corporation tax will now be discounted in the lower market value of the shares, because, other things being equal, the value of new investments will vary in proportion to the net profits to be derived therefrom. Although the corporate tax reduces the dividends, the reduced dividends on the reduced value will yield to new investors as large a percentage as did the larger dividends on a property of greater value — greater because untaxed. Thus where there is only a partial tax on personal property the corporation tax puts the new purchaser of shares in the same position as if he owned non-taxable property, *i.e.* it practically exempts all the shareholders except the original owners. In the case of bondholders where the corporation tax is deducted from the interest, this is equally true. When the corporation tax is assumed by the corporation and not deducted from the interest, — the almost universal rule in the United States — the bondholders are not reached at all, except in the very indirect way that they may be exposed to an ultimate diminution in the security of their lien. The tax

as such does not strike them; their property, consisting of corporate bonds, goes scot-free. A property tax or franchise tax on the corporation, under the given conditions, is not a tax on the individual holder of corporate securities.

The practical conclusion applicable to the United States to-day is as follows:

If the corporation tax is to be utilized as a means of reaching the faculty of the security holder, rather than of the fictitious person known as the corporation, it is necessary to generalize the tax — to levy a general tax on corporations, as a few states are now beginning to do. Furthermore, the corporation tax must be regarded simply as a part of a larger system of taxation, the constituent elements of which must endeavor to reach the other sources of the taxpayer's ability. The corporation tax, in other words, must be supplemented by other taxes, both state and local, in order that these taxes combined may stand in some proportion to the revenue of the individual. Then, but only then, will it always be double taxation to assess the corporation as well as the security holder. So far as there is a decided tendency to generalize the corporation tax, the trend of American legislation, in seeking to avoid double taxation, is in the right direction.

VII. *Local Taxation.*

Up to this point we have discussed chiefly the state taxation of corporations. But the lesser governmental divisions also have their claims to urge, especially in modern times when local needs outweigh so heavily those of the states. There are no less than five different methods of taxing corporations for local purposes in the United States. These are as follows:

1. A local general property tax.
2. A local corporate franchise tax in addition to the general property tax.
3. A local tax on real estate.

4. No local tax at all.

5. A distribution of the state tax on corporations to local districts.

The first plan, that of the local property tax, is still usual, even in some of the commonwealths that have abandoned the general property tax on corporations for state purposes. Corporate property is in some cases measured by the capital stock. In New York, for example, while banks, insurance and telegraph companies are taxed according to special laws, on all other domestic corporations the tax is levied at the usual rate of the local property tax on the actual value of the capital stock, together with the surplus profits or reserve funds exceeding ten per cent of the capital, after deducting the assessed value of the real estate and of the shares of stock in other taxable corporations.[1] Foreign corporations, however, are taxable only on the sums actually invested in the state.

The second method, that of a corporate franchise tax in addition to the local property tax, is found in Kentucky, where the tax on the franchises of certain corporations may be levied also by the local divisions. Somewhat analogous to this are the local licenses which in many of the Southern states are imposed on corporations as well as on individuals in addition to the state licenses.

The third method, that of a local tax on real estate only, is becoming more and more common, especially in the commonwealths which impose a separate state tax on certain kinds of corporations, like transportation and insurance companies. It is likewise the custom with banks, which pay a local real estate tax, and which also advance the tax on shares assessed to the shareholders.

The fourth plan, the exemption from local taxation, is found in a few states which impose a franchise tax on certain classes of corporations. The only state which has

[1] Laws of 1857, chap. 456, vol. ii., p. i. For a statement of the actual decisions under this law, see J. T. Davies, *A Compilation of . . . Cases relating to the System of Taxation in New York.*

a general corporation tax law in lieu of local taxation is Pennsylvania. Even there certain classes, like purely manufacturing companies, which are excepted from the operation of the general corporation tax, are subject to local taxation on their real estate. Furthermore, the real estate of railroad and other transportation and transmission companies, not necessary to the exercise of their franchise, may be taxed by the local bodies. Some cities are also permitted by their charters to tax the real estate of certain corporations, and the courts have ruled that the general corporation-tax law does not deprive these municipalities of the right to tax their real estate.[1] Finally, the tax on banks and insurance companies, being in some cases practically a tax on incomes, does not exempt their real estate entirely from taxation. Even in Pennsylvania, therefore, there is a slight local taxation of corporate real estate.

The fifth and last method of local taxation, the distribution of the state corporation tax to local bodies, is found in the case of railroads in several states like California, Maine, Mississippi, West Virginia and in the case of corporations in general in Massachusetts. But in some of these states the local bodies levy additional taxes, as in Massachusetts on real estate and machinery.

Of all these systems the third is clearly the best. All corporations with the possible exception of those enjoying special municipal franchises should be made to pay a local tax on their real estate; first, because it is mainly the realty which comes into direct relations with the purely local functions; and secondly, because the attempt to tax personalty would immediately lead again to the uncertainty and confusion from which it has been the policy of all recent reforms to extricate us.

The New York system, therefore, is doubly unwise: first, because it imposes a state tax on corporate real estate; and secondly, because it further imposes a local tax on

[1] Pennsylvania R. R. Co. *vs.* Pittsburgh, 104 Pa. State 522 (1883).

the total corporate property. The Minnesota or the Connecticut system, as applied to railroads, is unwise because it imposes no local tax at all. The system as formerly practised in Washington was unwise because it imposed only a single state tax which was in part redistributed to the local divisions. All these methods err because they fail to analyze the deeper principles that underlie corporate taxation.

The plan of levying a general state tax and distributing a part of the proceeds to the counties or municipalities contains a fruitful idea. It is already in vogue in an incomplete way in a few commonwealths, as we have seen. But it is susceptible of great expansion and may be of considerable value in solving the vexed question of local taxation. As applied to corporations, however, such a plan of redistribution is entirely premature. Until the proceeds of the state corporation tax are sufficient to enable the commonwealth to dispense entirely with the state tax on real property, nothing of the kind should be contemplated. Whatever claims the local divisions may justly have on the overfilled treasury of the commonwealth must be set aside until the taxation of real estate is left exclusively to them. The abolition of the state tax on real estate is perhaps the most necessary reform in the American system; to this all other changes must be subordinated. If the commonwealth treasury should be supplied through other sources, such as a state inheritance tax or a state income tax or a state tax on other elements, it would be possible not only to abandon the state taxation of real estate, but also to relinquish to the local bodies a portion of the state corporation taxes. But until that time arrives, a distribution of the corporation taxes among the local divisions will be inadvisable. The logical plan for the immediate future is to tax corporations on their net receipts, or on a valuation equal to the stock and bonds, for state purposes; and to tax them on their real property for local purposes. This, and this alone, satisfies the demands of scientific method and of practical policy.

VIII. *Conclusion.*

From the preceding survey it appears that the United States are slowly advancing to a more rational and harmonious system. The tendency of legislation and of judicial interpretation in the most progressive states is toward the following plan, which, although not yet completely realized in all its features in any one state, is in accord with sound economic principles :

1. Corporations should be taxed separately and on different principles from individuals.
2. Corporations should be taxed locally on their real estate only.
3. Corporations should be taxed for state purposes on their earnings, or on their capital and loans.
4. Only so much of total earnings or capital should be taxed as is actually received or employed within the state. In the case of transportation companies, a convenient and fairly accurate test is mileage.
5. Where capital and loans are taxed, the residence of the shareholder or bondholder should be immaterial.
6. There should be no distinction between domestic and foreign corporations. Each should be taxed for its business done or capital employed within the state.
7. If corporations are taxed on their property, property beyond the state should be exempt.
8. If corporations are taxed on their capital stock, they should not be taxed again on their property.
9. Where the corporate stock or property is taxed, the shareholder should be exempt. If corporate loans are taxed, the bondholder should be exempt.
10. Where the corporation and the shareholder or bondholder are residents of different states, the tax should be divided between the states by interstate agreements.
11. An additional tax should be levied on corporations which have through natural, legal or economic forces become monopolistic enterprises.

AMERICAN BIBLIOGRAPHY OF THE CORPORATION TAX.

[In addition to the tax-commission reports cited at the end of chapter xiii.]

1. Abbott, W. G. Objections to the Taxation of Savings Banks. New York, 1880.
2. Adams, C. F., Jr., Williams, W. B., and Oberly, J. H. (A committee appointed at a convention of state railroad commissioners to examine into and report the methods of taxation as respects railroads and railroad securities now in use in the various states of the Union, as well as in foreign countries; and further, to report a plan for an equitable and uniform system of such taxation.) Taxation of Railroads and Railroad Securities. New York, 1880.
3. Ames, John H. The Taxation of Real Property and Corporations. Des Moines, 1878.
4. Atkinson, Edward. Argument for a Change in the Law in regard to Taxing Foreign Corporations. Boston, 1887.
5. Coleman, James H. Letters on Corporations and Taxation. New York, 1878.
6. Foster, Roger. The Taxation of the Elevated Railroads in the City of New York. New York, 1883.
7. Hillhouse, Thomas J. Taxation of Banks by the State of New York. New York, 1880.
8. Hopkins, S. M. Speech on the Subject of Taxing Bank Stock. Albany, 1822.
9. Moore, Edward C., Jr. Corporate Taxation. In 18 American Law Review, 1884.
10. Olmstead, M. G. Argument on Behalf of Certain Corporate Interests before the Ways and Means Committee [of Pennsylvania]. Harrisburg, 1895.
11. Patterson, C. Stuart. Speech on the Taxation of Railroads before the Committee of Ways and Means [of Pennsylvania]. Harrisburg, 1895.
12. Short, Edward L. Careless Legislation on Corporate Taxation. 29 Albany Law Journal.
13. Spear, T. J. Bank Taxation. 21 Albany Law Journal.
14. Stevens, B. F. The Taxation of Life Insurance Companies. Boston, 1875.
15. Stevens, W. B. The Taxation of State Banks. Boston, 1865.
16. Williams, Chauncy P. The National Banks and State Taxation. New York, 1887.
17. Wright, John A. Memorandum of a System of Taxation, submitted to the Committee for Revision of the Revenue Laws of Pennsylvania. Harrisburg, 1890.

18. The State and National Banks. The Question of Taxation. Albany, 1864.
19. Report of the Committee of Bank Officers of the City of New York in relation to Bank Taxation. New York, 1875.
20. [Seven] Reports of the American Bankers' Association upon Bank Taxation. New York, 1875–1889.

CHAPTER IX.

THE CLASSIFICATION OF PUBLIC REVENUES.

AMONG the unsettled questions of the science of finance few are more troublesome than that of classifying the different kinds of public income. Classification is indeed not of supreme importance, for matter is always more essential than form. But correct classification is helpful in many ways. It requires logical criticism and rigorous analysis, and thus becomes a test of mental vigor; it conduces to accurate definition and prevents looseness of expression and confusion of thought; it may have important practical results in deciding questions of fact and in assigning definite values to doubtful categories; it points out contrasts and resemblances, and by eliminating or combining what is common, often suggests a clearer conception of the subject-matter. Correct classification is, in truth, an essential condition of all scientific progress.

It has frequently been remarked that we must distinguish between historical and actual classifications. For example, the whole class of lucrative prerogatives — the *Regalia* of the Teutonic kingdoms and of early fiscal science — were formerly separated from the other categories of public revenues because of their commanding importance in mediæval countries and of their supposed points of difference; whereas well-nigh every recent writer of importance, even in Germany, has confessed that all such revenues are capable of being classified under one of the other modern categories. So, again, while the revenue from the incidents of feudal tenure played a great rôle in the classification of Blackstone and other early writers, the need of showing the composite nature of such

revenues has been obviated by the disappearance of the tenures themselves. Finally, special assessments are a growth of comparatively recent times. Only a short time ago, a classification of public revenues might safely have ignored their existence; now a logical classification of actual revenues would be incomplete without them. What concerns us here is a classification applicable to modern conditions.

I. *The Primary Classification.*

From the standpoint of the individual all contributions to government are either gratuitous, contractual or compulsory. Every governmental revenue must fall within one of these three great classes. Individuals may make the government a free gift, they may agree or contract to pay, or they may be compelled to pay. The first method of securing revenue was at one time important, but its influence to-day is slight. The second and third methods correspond to the widely adopted classification suggested by Adam Smith,[1] who tells us that:

> The revenue which must defray . . . the necessary expenses of government may be drawn either, first, from some fund which peculiarly belongs to the sovereign or commonwealth, and which is independent of the revenue of the people, or, secondly, from the revenue of the people.

That is, the government may in the first place act like a private individual, possessing lands or other revenue-yielding property, and engaging in mercantile, financial or industrial pursuits. As Petty, the author of the first systematic English treatise on taxation, put it in the seventeenth century, the state is in some places the common cashier, the common usurer, the common insurer or the common beggar.[2] This is what the French call in the widest sense the revenue from the private and industrial domain of the state, and what the Germans

[1] *Wealth of Nations*, book v., chap. ii.

[2] William Petty, *A Treatise of Taxes and Contributions*, London, 1667, pp. 60, 61.

term the private-economic income. A better term, perhaps, is contractual income; since the government here puts itself in the position of a private person making a contract with another person. Such payments all rest on an agreement between the two contracting parties, in sharp contrast to the payments which the government demands by virtue of the sovereign powers delegated to it.

We often hear of the distinction between voluntary and compulsory contributions, meaning by the former the free gifts of the citizens. This distinction, however, is not perfectly accurate; for contractual contributions are also voluntary, without being gifts. In the case of a contract, the government agrees to do some particular thing in return for a payment, leasing land, for instance, in return for rent; in the case of the free gift, the government does not undertake nor does the donor expect any specific action in return. Yet both payments are voluntary. We must therefore distinguish not merely between voluntary and compulsory contributions, but between gratuitous, contractual and compulsory contributions.

Thus far almost all writers are agreed. The difficulty arises when we desire to classify the various kinds of compulsory revenues and to distinguish between some of these subdivisions and the different kinds of contractual revenues. All possible combinations have been made, especially by recent German writers. Let us confine ourselves in this chapter to the pith of the controversy, namely, to the subdivision of the compulsory contributions and their relation to some of the contractual revenues, as, for instance, the charges made for the services of governmental enterprises, like the post-office, the telegraph and the like.

In taking the property of individuals the sovereignty of the modern state manifests itself in different ways. The government may exercise in turn the power of eminent domain, the penal power, the police power or the taxing power.

The power of eminent domain confers on the govern-

ment the right of taking at its discretion, and to an indefinite extent, private property for particular uses. With the constitutional and moral limitations upon this power we have not here to deal, chiefly because the power is for the most part not a source of net revenue. The fact that in all free governments private property cannot be taken under this power except for public use, and even then not without just compensation, would in itself show that no net income to the state is contemplated. Yet such revenue may accrue incidentally; for the benefits accruing to the government through the expropriation may conceivably be greater than the damage inflicted on the private individual. Revenue through expropriation is thus the first class of compulsory income.

The second sovereign power of fiscal importance is the penal power, or right of inflicting fines and penalties, known technically as the power of sanction. This might be declared a part of the police, or regulative, power of the state, since every government regulation must carry with it the power of enforcement. But on account of the decidedly problematic fiscal importance of the police power, it seems better to separate them. The power to adjudge fines and penalties, however, while often quite important as a source of revenue, belongs rather to penology and administration than to the science of finance; for the private property is here taken, not in accordance with the needs of the state or with any principles of equality or uniformity or benefits or compensation, but solely as a punishment inflicted on the individual. The only limit to its fiscal significance in free countries is the vague provision, as in the constitution of the United States, that excessive fines shall not be imposed or cruel and unusual punishments inflicted. Fines and penalties thus form by themselves a class of compulsory revenues levied according to definite but non-fiscal principles. It is obviously wrong to class them with fees, as do some writers, or to ignore them entirely, as do others.

The third sovereign power of the state is the police power, or the power of regulation. This has played a great rôle in American jurisprudence. Yet it may be confidently stated that from the standpoint of the science of finance the distinction drawn between the police power and the taxing power is to a great extent a fiction, referable to certain difficulties in American constitutional law and to a lack of economic analysis on the part of the judges. Let us study this point more in detail.

II. *The Police Power versus the Taxing Power.*

The commonly accepted distinction between these powers is that the former is for regulation and the latter for revenue. One argument in support of this view is that advanced by authors like Mr. David A. Wells, who contend that a so-called tax which looks to anything besides the securing of revenue is not a tax, but an unconstitutional exercise of the taxing power. But even adherents to the distinction between the police power and the taxing power, like Judge Cooley, confess "that, in the apportionment of taxes, other considerations than those which regard the production of a revenue are admissible, and that the right of any sovereignty to look beyond the immediate purpose to the general effect cannot be disputed."[1] The position of Mr. Wells is the exact opposite of that of Professor Wagner, who includes in the very definition of a tax the "socio-political" element or the duty of regulating and correcting the distribution and use of private property.[2] The one writer would refuse the name "tax" to an imposition looking to anything else than mere revenue: the other ought logically to withhold the name from an imposition *not* looking to anything else than mere revenue. These positions are mutually exclusive and equally extreme.

On the other hand, the distinction of Judge Cooley is almost quite as untenable. Cases where the primary pur-

[1] Cooley, *Taxation*, 2d edition, p. 587.

[2] Wagner, *Finanzwissenschaft*, ii. (2d edition, 1890), p. 210.

pose is regulation, he thinks, are referable to the police power; cases where the primary purpose is revenue are referable to the taxing power. Mr. Cooley himself confesses that import duties with incidental protection are taxes. But suppose, as has often occurred, that they are protective duties with incidental revenue. Are they any the less taxes on that account? How about the tax on bachelors, which was imposed for the express purpose of diminishing celibacy? How about the ten per cent tax on state bank notes, imposed avowedly to destroy the state bank issues? How about the American tax on oleomargarine, confessedly of a regulative nature? How about taxes on spirituous liquors in the shape of liquor licenses, to regulate and diminish the liquor traffic? How about the many indirect taxes enacted in consequence of sumptuary laws? How about certain inheritance taxes, whose imposition is demanded on the express ground that they will limit fortunes? How about the single tax, whose only *raison d'être* is the attempt to change the existing distribution of wealth? Shall we call the Indian duty on opium a tax, and refuse the name to the American internal revenue charge, because India looks primarily to revenue, and the United States to regulation? Shall we call the French *impôt des patentes* a tax, and deny the name to the analogous license or privilege taxes in some of the Southern commonwealths, because in the latter case the object is sometimes distinctively regulative? In fact, if this is to be our line of cleavage, we must reconstruct the science of finance and remove from the class of taxes whole categories of impositions to which no one has ever thought of denying the character or name of tax.

The confusion in the American law is at once complimentary and uncomplimentary to the judiciary. It is complimentary in the sense that the judges, when brought face to face with the conflict between constitutional limitations and the demands of social evolution (or what is known in legal parlance as public policy), have sought to remain true to their function as the final interpreters of social progress.

This they have been able to do, however, only through legal fictions and divergent decisions. Any one who has studied the American law of taxation as a whole must have become painfully conscious of the hopeless contradictions among the laws of the several states on many important points. This condition is due in great measure to the fact that the constitution or laws of one state by implication forbid what the constitution or laws of another state expressly permit. In order to take an actual case, which is perhaps in line with public policy, out of the range of the legal inhibition, the courts of the first state are forced to adopt an interpretation wholly unnecessary in the second. Thus the continuity of social development is preserved, even at the sacrifice of legal consistency or uniformity. For instance, in New York street-car licenses are held to fall under the taxing power, while in Pennsylvania they are put under the police power, simply because, under the particular conditions, it seemed to be a matter of equity, in the one case to uphold, and in the other to object to such a charge.[1] The payment in the two instances was the same, both in amount and in principle; but the attempt to make the same laws conform to a public policy which differs in the different states has brought about a contradiction. So, too, the whole system of high license or liquor taxes is in some states brought under the taxing power; but in others, because of certain constitutional difficulties, it is put under the police power.[2] To this extent the police power has been a legal fiction to enable the courts to uphold what could not well be brought under the taxing power; although in another leading case[3] the liquor tax was upheld under the taxing power because there was a constitutional obstacle to its being put under the licensing or police power. The police power is of great and growing legal importance in the United States, largely because of the peculiar

[1] *Cf.* 2d Avenue Railroad Cases, 32 N. Y. 261, with Railroad Company *vs.* Philadelphia, 58 Pa. 119. What was held "reasonable" in one case was declared "unreasonable" in the other.

[2] Burch *vs.* Savannah, 42 Ga. 596. *Cf.* 50 Texas, 86.

[3] Youngblood *vs.* Sexton, 32 Mich. 406.

principles of American governmental relations, whereby local bodies are deemed to have only those powers expressly delegated to them, in contradistinction to the European method according to which local bodies possess, in certain respects, all powers not expressly withheld from them.[1] Many of our cities and towns have no taxing power; and even when they have the power, it is strictly construed. The courts, therefore, have been compelled to uphold much under the police power that under other and more favorable conditions they would and could have upheld under the taxing power.

On the other hand, there is an element which is not quite so complimentary to the judges. The courts have frequently confused taxes in the narrower sense with the exercise of the taxing power in the wider sense. As we shall see, there are various forms in which the taxing power may manifest itself: taxes in the narrower sense are only one form. Special assessments for instance, have been almost universally upheld as an exercise of the taxing power, while sharply distinguished from taxes in the narrower sense. Yet in a leading case sidewalk assessments, which as a matter of principle do not differ at all from other special assessments upheld under the taxing power, have been declared police regulations.[2] The court has here simply confused taxes with the taxing power. It is, moreover, impossible to see any difference between the various cases of sewer and levee assessments quoted by Mr. Cooley as an exercise of the police power and the cases of sewer and levee assessments quoted by him in another chapter as falling under the taxing power.[3] The whole distinction, in fact, rests upon a confusion. So, again, while both taxes and fees are an

[1] Goodnow, "Powers of Municipalities respecting Public Works," *Publications of the American Economic Association*, ii., pp. 72–79. Professor Goodnow terms these respectively the systems of legislative and of administrative control.

[2] Godard, Petitioner, 16 Pick. 504, 509, quoted by Cooley, *Taxation*, p. 589.

[3] Cooley, *Taxation*, pp. 588–591, compared with pp. 616–620.

exercise of the taxing power, because it has frequently been deemed necessary to uphold license fees by distinguishing them from taxes, many of the courts have declared license fees to be an exercise not of the taxing power but of the police power, thus confusing taxes with the taxing power. There is, as we shall see, a decided difference between a license fee and a tax; but it is not the one stated by the courts. It is this groping after the real distinction between fees and taxes, to be explained in a moment, which has led judges, not trained in economics, to draw the line between payments under the police power and those under the taxing power. The distinction between fees and taxes is not synonymous with the distinction between the police and the taxing power; for there are many classes of fees, like court fees, fees for legal documents and school fees, which cannot possibly be put under the police power.

While, then, it may be expedient from the legal point of view to distinguish between the police power and the taxing power, ruling that the one is for regulation and the other for revenue, and while the constitutional importance of the police power, especially in the United States, is in many respects considerable, the distinction from the economic and fiscal standpoint is, nevertheless, wholly unnecessary. A tax is no less a tax because its purpose is regulation or destruction; and a fee or payment for regulation brings in just as much revenue as a precisely identical fee imposed primarily for revenue. From the standpoint of finance the test is not whether the payment is for regulation, but, as we shall see later, whether it is primarily for special benefit or primarily for common benefit; that is, it is a distinction not between police power and taxing power, but between fees and taxes. In other words, payments that are legally put under the police power ought scientifically to be classed under the taxing power.

III. *Fees.*

We come finally to what is from the fiscal standpoint the chief sovereign power of the state — the power of taxation. Expropriation is not fiscally important, the significance of fines and penalties does not lie in the financial domain, and the police power, as we have just seen, is of no consequence from the standpoint of revenue; but the taxing power is of an entirely different nature.

The taxing power may manifest itself in three different forms, known respectively as special assessments, fees and taxes. These three forms are all species of taxation in the wider sense, so far as they differ on the one hand from contractual revenue or *quasi*-private income, and on the other hand from the remaining divisions of compulsory revenue, like expropriation and fines. What is common to all three is that they are compulsory contributions levied for the support of government or to defray the expenses incurred for public purposes. That is the essence of the taxing power. But, although they are all forms of taxation in this wider sense, the differences between fees and special assessments on the one hand, and taxes in the narrower sense on the other, are so marked that they must be put into separate categories. Let us study their characteristics, taking up first those payments, like fees, tolls, costs and charges, which may be summed up under the general head of fees (the German *Gebühren*, the French *taxes*, the Italian *tasse*).

The distinction between fees and taxes, although sometimes ascribed to Rau, is really much older. Adam Smith already speaks of certain expenses "which are laid out for the benefit of the whole society." "It is reasonable, therefore," he adds, "that they should be defrayed by the general contribution of the whole society, all the different members contributing as nearly as possible in proportion to their respective abilities." These, as he afterward explains, are taxes. On the other hand, he speaks of certain outlays, as for justice, for "persons who give occasion to this expense," and "who

are most immediately benefited by this expense." The expenditures, therefore, he thinks, "may very properly be defrayed by the particular contributions of these persons," that is, by fees of court. And he extends this principle to tolls of roads and various other expenses.[1] The "particular contributions" of Adam Smith, in distinction from general contributions, are nothing but fees in distinction from taxes. The same distinction is found several decades before Adam Smith in the work of Justi. He, however, like the other Germans of his time, looked upon the *Regalia*, or lucrative prerogatives, as a separate class; and hence classified public revenues into (1) domains, (2) regalia, (3) taxes, and (4) casual revenues, including prices and payments for special privileges.[2] Later on, Rau gave these latter payments the name of *Gebühren* or fees; but the essence of the distinction is to be found in Justi, and still more clearly in Adam Smith.

A fee, then, is a manifestation of the taxing power. It is a compulsory contribution for a service in which the element of public purpose must be present; but it differs from a tax in several important points.

First, a tax is levied as a part of a common burden; a fee is assessed as a payment for a special privilege. The basis of taxation is the ability or the faculty of the taxpayer; the basis of a fee is the special benefit accruing to the individual. In the case of a tax, this ability, it is true, may be influenced to a certain extent by the opportunities or privileges or benefits received. But the difference is the test. In the case of a fee, the benefit is measurable; in the case of a tax, the benefit is not susceptible of direct measurement. In the case of a fee, the particular advantage is the very reason of the payment; in the case of a tax, the particular advantage, if it exists at all, is simply an incidental result of the state action.

[1] *Wealth of Nations*, book v., chap. i., part iv. (vol. ii., p. 402, of Thorold Rogers' edition). Compare book v., chap. i., part ii. and iii. *passim*.

[2] Justi, *Staatswirthschaft*, 2d edition, 1758, ii., pp. 95, 400–429.

The question of special benefit was originally of minor importance, the mediæval monarch exacted in the shape of fees and charges about what he chose, disguising exactions under the mask of payments for special privileges. Even there, however, it may be said, not that the idea of benefit was absent, but that the monarch made himself the judge of the amount of benefits. That his despotic estimate often resulted in hardship does not alter the theory. Gradually, however, the idea of actual benefit came to the foreground, until it has finally become the controlling factor.

A second distinction between fees and taxes is that a fee does not normally exceed the cost of the particular service to the individual. This, however, although commonly made much of, is of subordinate importance. In the first place, it can obviously apply only to those fees paid in return for some positive work done by government. The government, indeed, must always give something in return for a fee; but in many cases it may give only a permission to do something — a permission which costs almost nothing, and for which a considerable fee may be exacted. The controlling consideration here is not cost, but measurable special benefit. Historically, we know that these special charges were made entirely irrespective of cost.[1] But even in the case of a positive action by the government, cost is simply another method of measuring special benefit.[2] This has been overlooked, but is none the less true. In all competitive private enterprises the benefit to the individual is the cost. That is, the amount which the individual is willing to pay — and he is the best judge of the benefit to be derived — is the price; and the price is fixed ultimately by the cost of production. The whole modern theory of marginal utility as the regulator of price is

[1] Professor Brentano calls attention to this historical fact. *Cf.* Faber, *Die Entstehung des Agrarschutzes in England*, p. 58. Both fail to notice the points made in the text.

[2] The cost here referred to is at once the cost to the individual and the cost to the government. They are synonymous, because under the supposition the government gives its services for cost.

simply a way of stating the degree of special benefit to the individual; and the true theory of price confesses that marginal utility in competitive enterprises resolves itself ultimately into cost of production. The benefit to the individual, therefore, is the cost. As soon as we have a private monopoly, however, the benefit to the individual diminishes in proportion to the sacrifice he is compelled to make in paying more than the cost of production; and the excess of price over the normal benefit (as measured by cost) represents to this extent a tax on the individual.

The same is true of governmental action. It may, and often does, happen that a government is not actuated by motives of profit, but, like a private competitor, sells its services for cost. Special benefit to the individual and cost to the government are then synonymous. But if the government seeks to make a monopoly profit and charges more than cost, then as before the special benefit to the individual may be said relatively to diminish as the charges increase, until finally the exaction becomes so great that the special benefit is merged in the special burden and the charge becomes not a counter-payment, but a special tax. On the other hand, the government may decide to charge less than cost, or even to offer its services gratuitously, in which cases the special benefit to the individual may gradually be swallowed up in the common benefit. Here the very reason of the gratuitous service is that no special benefit exists, or that it results only incidentally from general state action. Thus we see that special benefit to the individual is correlative with cost to the government. If the charge is less than cost, the special benefit is *pro tanto* converted into a common benefit, until finally there is no charge, because no special benefit. If the charge is more than cost, the special benefit is *pro tanto* converted into a special burden, until finally the charge is all tax, because it is all burden, and no special benefit.

This point of view helps us out of a difficulty as to the line of cleavage between fees and taxes. Thus, if a charge

is made for the cost of judicial process, the payment is a fee, because of the special benefit to the litigant. If no charge is made, the cost of the process must be defrayed by general taxation; and the litigant pays his share in general taxes. If the charge is so arranged as to bring in a considerable net revenue to the government, the payment by the litigant is a tax — not a general tax on all taxpayers, but a special tax on litigants, like the tax on lawsuits in some of our Southern commonwealths. The character of fee disappears only secondarily because the principle of cost is deviated from, but primarily because the special benefit to the litigant is converted in the first case into a common benefit shared with the rest of the community, and in the second case into a special burden. The failure to grasp the basis of this distinction, which is equally true of other fees, has confused many writers.

A third distinction between fees and taxes may be found in the conditions attached to the service which the government performs. It may be said that in the case of a fee the government does some particular thing in return, while in the case of a tax it gives no special service. The particular thing done by the government in return for a fee may be either the display of some positive energy, as in furnishing a water supply, or it may be a simple permission to do something. The government may create direct utilities, or it may permit the individual to create utilities; but in each case it demands a return for the privilege. In the case of a tax, on the other hand, the government simply refrains from doing; or, if it does anything at all, does it only as a general governmental action. This distinction applies to so-called special taxes, as well as to general taxes; for even in the case of a special tax, the government does not pledge itself to do any special thing for the individual as an individual. It agrees to do some special thing for the community or for the particular class involved, but it is wholly immaterial to the government whether the individual avails himself of the incidental advantage accruing to the class as a

whole. Even in the case of special taxes we are not confronted with the principle of give and take, or *quid pro quo*, as regards individuals.

A further distinction that has been very fruitful of confusion is that between the business licenses or fees, and business taxes. The legal terms applied to such payments must not lead us astray. For instance, a given charge levied on certain retail businesses is called in various American states a fee, a license, a license fee, a license tax, a special tax, a specific tax, a privilege tax and an occupation tax.[1] A certain payment exacted from insurance companies is called indifferently an insurance fee, an insurance license, an insurance license fee, an insurance tax and an insurance license tax. A certain payment imposed on some corporations is called variously a charter fee, a bonus on charters, a license tax, a tax on certificates, an organization tax, a corporation tax and even a corporate franchise tax.[2]

The real distinction between a license charge and a business tax is that the non-payment of a license charge normally renders the exercise of the business illegal, while the non-payment of a business tax does not render it illegal. More broadly, it may be stated that a license charge is a condition precedent, while a business tax is a condition (if a condition at all) subsequent.

A license charge, however, may be either a license fee or a license tax;[3] and in order to ascertain which it is, we must fall back on the preceding distinctions. When the license is imposed to cover the cost of regulation or to meet the outlay incurred for some improvement of special advantage to the business, it may truly be said that the licensee gets a special benefit from the privilege, a special benefit measured

[1] Compare my monograph on *Finance Statistics of the American Commonwealths*, 1889, pp. 88–96.

[2] Compare *supra*, p. 175.

[3] This distinction is overlooked by the American legal writers. Thus Black on *Intoxicating Liquors*, § 108, makes a labored argument to distinguish taxation from license, while in reality he is distinguishing license fees on the one hand from license taxes and business taxes on the other.

by the cost. The charge would then, as in the common case of cab licenses, be a fee. When, however, the charge for the license to carry on a business, which before the imposition of the restrictive law was open to any one, is purposely so high as to bring in a distinct net revenue to the government above the cost of regulation, we can no longer properly speak of special benefits to the licensee, since the special benefit is converted into a special burden; the charge is then no longer a license fee, but a license tax. This is the case with some of the so-called license or privilege taxes in the Southern commonwealths.[1] Finally, if the payment is not conditional upon taking out a license, but is assessed on certain elements of the business, such as purchases, sales, capital, *etc.*, as in the French *patentes*, the German *Gewerbesteuer*, and some of the American payments, then we have not license taxes, but business taxes, because the condition is not precedent, but subsequent. The distinction between license tax and business tax is one of condition of payment: the distinction between license fee and license tax is one of benefit and cost.

There is, therefore, some truth at the basis of the distinction drawn by the American judges between the police power and the taxing power; but it is to be understood in a sense quite different from that usually adopted. The distinction should really be drawn between a license fee and a license tax on the one hand, and between a license tax and a business tax on the other. The distinction between police power and taxing power is not valid, because from the broad scientific point of view a fee may be equally an exercise of the taxing power, while a tax is none the less a tax because it is

[1] This is really the basis of the recent decision of the United States Supreme Court in the case of Harmon *vs.* City of Chicago, Supreme Court Reporter, xiii., no. 10, p. 306 (Feb. 13, 1893). A license charge for using the Illinois River is declared to be a tax, and in conflict with the interstate commerce provision of the constitution, because it is not a compensation for any specific improvement. In the latter case it would be a license fee or toll, and perfectly valid, as decided in Huse *vs.* Glover, 119 U. S. 543.

regulative. When the American judges hold that a license fee must "not exceed the necessary or probable expense of issuing the license and of inspecting and regulating the business,"[1] they are drawing the line between license fees and license taxes, although legal complications may compel them to assert that it is a distinction between the police power and the taxing power. For instance, the decision that high liquor licenses are not taxes — a decision quite untenable from the standpoint of public finance — is due simply to certain constitutional limitations, and to the policy of upholding such payments. Liquor licenses, if high enough, are no less taxes than the Southern license or privilege taxes; and the attempt to call them license fees, in order to uphold them under the police power, is the result of a praiseworthy but palpable legal fiction. To say, as Cooley does, that a high liquor license is only a license fee covering the cost of regulation, because "it is reasonable to take into account all the incidental consequences that may be likely to subject the public to cost" (such as prevention of resulting crime and disorder), is a considerable stretching of the term. It seems impossible to state how much of pauperism and crime is due to drink and how much to other causes.

The truth which the judges have vaguely seen, and which they have attempted to realize in their decisions, then, is simply this: a fee is a payment for a service or privilege from which a special measurable benefit is derived, and normally does not exceed the cost of the service; a tax is a payment where the special benefit is merged in the common benefit, or is converted into a burden. A fee remains a fee, whether levied under the taxing power or the police power; and a tax is no less a tax when classified under the police power than when put under the taxing power.

It seems, then, that writers like Professor Bastable, who desire to discard fees as a source of revenue co-ordinate with taxes, are taking a step backward, and are abandoning a distinction dating back at least to Adam Smith.

[1] Cooley, *Taxation*, p. 598.

It is, however, useless to oppose the creation of a class of revenues co-ordinate with taxes; for, even if we disregard fees, we cannot shut our eyes, as most writers have done, to the existence of another important class of compulsory revenues which are not taxes. These are known as special assessments.

IV. *Special Assessments.*

It has already been pointed out that classification of public revenues has depended upon historical conditions. Special assessments are a comparatively modern and a specifically American development, although the germ of the system may be found in the Roman edict: *Construat vias publicas unusquisque secundum propriam domum.*[1] In France and England they have been so rarely used as to escape detection, although of late years the policy of introducing the principle more widely has begun to be discussed in England.[2] In Belgium and Germany they have been introduced in the past few decades, and are occasionally mentioned in the latter country under the head of *Beiträge.*[3] Even so recent writers as Leroy-Beaulieu and Bastable ignore them completely. In the earlier books on public finance we find no mention of them. Nowhere do we find

[1] Quoted in entirely another connection by Sax, *Die Verkehrsmittel in Volks- und Staatswirthschaft*, i., p. 186.

[2] In France they may be traced back to 1672 and to a more general law of 1807, known as the law on "l'indemnité pour payement de plus-value." But only about twenty to twenty-five cases of application are known. Compare Aucoc, *Droit Administratif*, ii., pp. 732 *et seq.* For the earlier cases, see Clément, *La Police sous Louis XIV.*, p. 144. —For England see *infra*, chap. xi.

[3] In Prussia they are legally known as *Interessentenzuschüsse.* Compare Leidig, *Preussisches Stadtrecht*, p. 375, and Loening, *Verwaltungsrecht*, p. 580. Other forms of special assessments are known as *Deichbeiträge*, and in Baden as *Soziallasten.* The whole system seems to have received a greater development in Belgium than anywhere else in Europe, and yet it has not been noticed at all. The Belgian, Denis, does not mention it in his recent work, *L'Impôt.* The details of the system may, however, be found in Leeman's *Des Impositions Communales en Belgique*, 2d edition, chaps. v.–x. He calls

any adequate discussion of special assessments in theory or in practice, or any successful attempt to correlate them with other forms of compulsory contributions.

No American who treats of public finance as a whole can fail to be struck with the importance of special assessments in actual practice. To take only two examples: in New York City, in 1891, special assessments yielded over $2,400,000; while in Chicago, in 1890, they yielded $8,790,443 — a sum actually larger than that raised by taxes. The courts have been filled with litigation respecting special assessments, and certain valuable principles have been slowly evolved. Yet no one has attempted to construct a theory of special assessments, or to assign them to their proper place in the list of public revenues. Thus the theory of special assessments has not been worked out in Europe, because the facts were not deemed sufficiently important; and it has not been worked out in America, because there have been almost no American theorists in public finance.[1]

A special assessment may be defined as a compulsory contribution, levied in proportion to the special benefits derived, to defray the cost of a specific improvement to property undertaken in the public interest. When a new street is opened, for instance, it is deemed equitable that the expense should not be entirely borne by the whole community, but that it should be defrayed in part or in whole by the owners of abutting real estate, whose property receives an undeniable benefit in the immediate enhancement of value. The advantages of the particular government services accrue in great part to the property owners; and it is therefore

them *taxes*, but confuses them continually with taxes proper, including special taxes.

[1] Since the above words were originally published, one of my students, Dr. Victor Rosewater, now editor of the *Omaha Bee*, has completed his monograph on *Special Assessments: a Study in Municipal Finance*, which appeared as vol. ii., no. 3 of Columbia University Studies in History, Economics and Public Law. This monograph contains a comprehensive treatment of the whole subject, historical, legal, statistical and theoretical, and is now the chief authority on the topic.

right that they should bear the burden in proportion to the advantages received. Without going into the history of the system, we may say that, beginning in New York in the seventeenth century, it has been well-nigh universally adopted in the United States. Its operation extends to improvements like the following: opening, laying out, grading, paving and repaving, planking and curbing the streets; sprinkling them with water, illuminating them with gas and electric light, and even ornamenting them with shade-trees; constructing drains, sewers, levees and embankments; laying wire conduits and water pipes; bettering waterways and dredging rivers; laying out and developing public parks, squares and drives. In all these cases the entire expense, or a certain portion of it, is met not by general taxes, but by special assessments. We are here to consider the theory of special assessments.

In the first place, special assessments represent an exercise of the taxing power. In the early days various attempts were made to justify them under the power of eminent domain and under the police power; but in 1851 a leading New York case[1] swept away all these refinements, and decided that special assessments were a constitutional exercise of the taxing power. The reasoning of Judge Ruggles in that case is so convincing as to need no comment or defence; and the whole development in the United States has since proceeded on the line he laid down.

In a special assessment the element of public purpose must always be present; for if levied solely for private purpose it would be an act of confiscation, not an exercise of the taxing power. Again, a special assessment must be capable of apportionment: there must be an assessment district, and the assessment must not be arbitrary. The countless cases which enforce these points show, in short, that special assessments, like fees, are an exercise of the taxing power.

[1] People *vs.* Brooklyn, 4 N. Y. 419. Some of Judge Ruggles' *obiter dicta* on the principles of taxation are open to serious question. But as they have really nothing to do with the point decided in the case, we pass them by.

Special assessments, like fees, are not, however, taxes in the ordinary or narrower sense. Taxes, as we know, are compulsory contributions levied to defray the expenses incurred in the common interest, without any reference to particular advantages accruing to the taxpayer; but in special assessments, as in fees, the services for which the expenses are incurred redound to the particular benefit of the individual. The primary test of a tax is that it imposes a common burden: the primary test of a special assessment is that it implies a special benefit. From this one great distinction flow all the others, which may be summed up as follows: —

First. In a special assessment the special benefit to the individual is measurable. In a tax the special benefit does not exist, or, if it exists at all, it results incidentally from the individual's share in the common benefit; it is not separately measurable. No one, perhaps, will be apt to confound a special assessment with a general tax; but there is also a clear line of distinction between a special assessment and a special tax. An adequate discussion of the relation between a general tax and a special tax belongs to the question of the sub-classification of taxes in particular, and would lead us too far astray here. But we can say at all events this: a general tax, like the ordinary state or local tax in America, is not levied for any definite, particular expenditure, but is assessed for general governmental purposes; a special tax, like the English local rates or the local taxes in some American states, like New Jersey,[1] is assessed for the accomplishment of some special task to which the government is pledged, and is levied on a definite section of the population.[2] The police rate, the sewer rate, the poor rate, the lighting rate, are each levied for the special purpose and on the definite class of taxables subject

[1] Compare *Comptroller's Report* of the state of New Jersey for 1891, financial condition of counties, *etc.*, pp. 1–87.

[2] These taxes must of course not be confounded with the so-called "special taxes" in some of the Southern commonwealths, which are known as license or privilege or business taxes in the other commonwealths.

to the rate. But this special tax is none the less a veritable tax; it is levied for a public purpose, it is assessed on what is deemed to be the faculty or "means" of the taxpayer; and there are no particular benefits accruing to him as an individual. Even if he does perchance derive a benefit, it is not a special, measurable, individual benefit apart from the common benefit that the other members of the class derive; it is simply an incidental result of his share in the common benefit. In the special assessment, on the other hand, the special individual benefit is distinctly measurable and forms the basis of the assessment. The English local rates, for instance, might seem to be in no wise distinguishable from the American assessments. It is a clear principle of the English system of local rates, however, that "the exact measure of the benefit is not the measure of the liability to be taxed," while the reverse is true in the American system of special assessments.[1] In other words, the test of the special assessment is measurable special benefit: the test of the special tax is special taxable capacity or faculty, just as the test of the general tax is general taxable capacity or faculty. The distinction is quite clear; yet the few writers who have spoken of special taxes at all have almost universally confused them with special assessments.

Secondly. Taxes may be proportional to property, or to income, or to expense, or to any other test of faculty, or they may be progressive rather than proportional; special assessments can never be progressive, but must always be proportional to benefits. This is the recognized principle in American jurisprudence; and the only difficulty now is to decide what is to be regarded as the most equitable standard for the measurement of benefit. Acreage, frontage, value, superficial area of the property — all these have been upheld as proper guides to apportionment, and as constitutional tests of presumptive special benefit. Not only are

[1] For a fuller statement of the distinction between a special tax and a special assessment, see *infra*, pp. 345–350.

special assessments void when there is no special benefit; they are also voidable when the charge exceeds the special benefit;[1] for to charge more than the exact benefit would be equivalent to taking private property without due compensation. In the special assessment there must be compensation; in the tax there is no question of compensation. The only matter in dispute in the American courts is whether the special benefit need be actual or may be presumptive; the general tendency of the decisions is to make the legislative and administrative discretion rather wide.[2]

Thirdly. Special assessments are confined to specific local improvements, while the sphere within which taxes operate is in this respect unlimited.

Fourthly. For a special assessment the government performs a definite, particular act in return; it is an instance of service and counter-service, of give and take. For a tax the government does not pledge itself to do a particular thing for the particular individual in return. The reasoning here is precisely the same as that adduced above in discussing the distinction between taxes and fees. A special assessment is here on exactly the same footing as a fee.

Fifthly. Taxation is resorted to in order to defray the running expenses of government, and to effect in time the amortization of the debt; while the object of special assessments is to provide for the capital account — to increase, as it were, the permanent plant of the community.[3]

The distinction between special assessments and taxes has been widely recognized in American jurisprudence; and the constitutional limitations applied to taxation have generally been declared inapplicable to special assessments. As Cooley puts it, "The overwhelming weight of authority is in favor of the position that all such provisions for equality and uniformity in taxation by value have no application to

[1] *Cf.* the celebrated Agens cases in New Jersey. State *vs.* Newark, 37 N. J. L. 415; Bogert *vs.* Elizabeth, 27 N. J. Eq. 508.

[2] *Cf.* Matter of Church, 92 N. Y. 6; Allen *vs.* Drew, 44 Vt. 174; and other cases cited in Rosewater, *Special Assessments.*

[3] Rosewater, *op. cit.*, p. 129.

special assessments." Exemptions from taxation, moreover, do not imply exemptions from special assessments. Special assessments are none the less a distinct class because in some laws they are called taxes. In some cases, in their anxiety to uphold the distinction, the same courts interpret the word "assessment" in the phrase "uniform rate of assessment and taxation" sometimes in one way, sometimes in the other. That is, when special assessments must be put under the taxing power in order to be upheld, "assessment" is held to be used in the general sense, and to mean taxation; when in other cases special assessments can be upheld only by being distinguished from taxes, "assessment" is held to be used in the technical sense, and to mean something different from taxation. All the ingenuity of the American judges has been needed to attain the result now achieved — the marked distinction between special assessments and taxes;[1] but their efforts have been sensible, and the result is in accord with the teaching of the science of finance.

Special assessments hence are not taxes. They differ from taxes in the same way that fees differ from taxes,

[1] One recent case is especially noteworthy as illustrative of ingenious distinction. The general trend of authority, as we have shown, is to give a wide discretion, and to uphold assessments per front foot as a good presumptive test of special benefit. Yet in the celebrated Illinois case of Chicago *vs.* Larned, 34 Ill. 203 (1864), the court held that the provisions of the constitution as to uniformity and equality of taxation were unusually stringent, and were applicable also to special assessments. The court was really mistaken here, as the Illinois constitution did not differ from many others where the contrary interpretation was adopted. Still, as a consequence of their view, assessments could be made on each lot only up to benefit actually proved, while the remainder of the cost would have to be defrayed by general taxes. Assessment by front foot was held to be invalid. Yet later the courts evaded this case by a very fine distinction. The constitution of 1870 gave local authorities the right to levy "special taxes for local improvement;" and in White *vs.* People, 94 Ill. 613, the court held that a special tax was not a special assessment, and that a special tax might exceed the actual benefits to the particular lot. An assessment by front foot is hence valid, and the system in Illinois to-day is the same as in other states. Of course the "special tax" of the Illinois constitution is simply the "special assessment" of other states, and is even known by the latter name in Illinois itself. There is, as we have seen, a distinction between a special tax and a special assessment; but it is not the distinction drawn by the Illinois court.

since both fees and special assessments rest on the doctrine of equivalents. Fees, special assessments and taxes have points in common in that they are all manifestations of the taxing power. Fees and special assessments have additional points in common, which they both possess in distinction from taxes. But, finally, fees and special assessments differ in some respects from each other. We have distinguished special assessments from taxes; it remains to distinguish them from fees.

It may, indeed, be claimed that there is no distinction, and that special assessments simply constitute a sub-class of fees. It is true, as has just been pointed out, that what characterizes taxes proper as against the other manifestations of the taxing power is general benefit as against measurable special benefit. If we name the first kind *taxes*, we might indeed give to the second kind some generic name. Special assessments would then be simply a distinct sub-class. But they are so extremely important and so far overshadow all the other cases of special benefit taken together, that it seems advisable to put them into a separate category. Especially in the United States, where the judges are just beginning to wrestle with the actual problems, it would tend to confuse rather than to clarify, if we put special assessments and cab licenses, for instance, into the same category. Let us then attempt to point out in what respects special assessments differ from fees.

In the first place, special assessments are levied only for specific local improvements: fees may be levied for any services. The field of operation of special assessments is restricted; that of fees is unrestricted.

Secondly, special assessments are paid once and for all; fees are paid periodically, according to each successive service. The only qualifications to this statement are that special assessments may, in a few cases, be spread over a longer period, and may then be payable by regular instalments; while, on the other hand, a fee is of course paid only once when the service is demanded only once, as in the

case of a marriage fee. That, however, does not invalidate the distinction. In the special assessment the payment is capitalized in a lump sum, payable generally at once, but occasionally by instalments; in the fee, on the other hand, the payment is, so to speak, fragmentary and irregular. In a given case there may be a choice of methods. For instance, in constructing a bridge, the cost may be defrayed either by levying a special assessment on the owners of abutting property or by charging tolls on those using the bridge, who are presumably in great part also the owners of abutting property or their friends and dependents. If the benefits redound in greater part to these property owners, the cost should be paid by a special assessment; if the benefits redound in greater part to individuals who are not property owners, the cost should be paid by a fee (toll); if the benefits are so wide-spread that the whole community is almost equally interested, the cost should be paid by neither a special assessment nor a fee, but by a general tax.

Thirdly, a fee is levied on an individual as such: a special assessment is levied on an individual as a member of a class. That is, in the case of special assessments there must always be an assessment area over which the whole assessment is levied, to be then further distributed according to a definite rule of apportionment. It is, for instance, a settled rule of the American law, that in assessing benefits the assessors cannot restrict themselves to the cost of the improvement in front of a particular lot.[1] In the case of a fee, on the other hand, the government looks not to a class or to an area, but to the separate individual.

Fourthly, a special assessment must always involve a benefit to real estate: a fee is paid for a service which may benefit other elements than real estate, such as personal property, or other attributes of the individual without any reference to property.

There is one further distinction, which, however, is more imaginary than real. It might be maintained that special

[1] *Ex parte* Mayor of Albany, 23 Wend. 277.

assessments are like direct taxes, and fees like indirect taxes, in the sense of taxes on consumption or on acts and communication, because the former are compulsory and the latter voluntary. But this distinction is badly expressed, and really untenable; for, notwithstanding the contrary statement, which has frequently been made, indirect taxes are not a whit more voluntary than direct taxes. It is true that if a man chooses to go without tobacco he may escape the tobacco tax; but it is equally true that if a man chooses to go without certain kinds of property or income, he may escape to that extent the property tax or the income tax. Indirect as well as direct taxes are compulsory, not voluntary, contributions. In the same way, there is no truth in the statement that a fee is voluntary and a special assessment compulsory. It is true that we do not need to pay a pedler's license fee if we do not care to peddle; but, on the other hand, we do not need to pay a special assessment if we do not care to own the land. Further, when the payment of a fee is connected with necessary every-day transactions, as are mortgage registration fees or marriage fees, there can be no question of the compulsory nature of the transaction. Birth and death cannot well be termed voluntary actions; yet a registration fee for a birth or death certificate does not differ in character from any other fee. Fees and special assessments, indirect and direct taxes, are all compulsory contributions.[1]

It is clear, then, that there is a line of distinction between fees and special assessments, although not so sharp as between fees and special assessments on the one hand and taxes on the other. There is no danger of confusing them in practice; yet very little has been done to differentiate them in theory. Even Wagner, though compelled in the last edition of his work to recognize the existence of "*Beiträge*," mentions them in a few lines as merely an unimportant

[1] Neumann, who is the only writer to attempt a distinction between fees and special assessments, makes it turn on a very dubious distinction between direct and indirect taxes. *Die Steuer und das öffentliche Interesse*, pp. 327, 334.

addendum to fees. Of course, it would be easy to follow Professor Bastable's example, and deny the existence of fees as a separate class, in order to avoid the "creation of a distinct group of state receipts co-ordinate with that derived from taxation."[1] But even he, when confronted with the existence of special assessments, will have to revise his classification, and create at least one "distinct group co-ordinate with" taxes. And if this one group is separated from taxes, it will be difficult to refuse to cut off another group, for the arguments that apply in the one case apply equally well in the other.

V. *Prices.*

We now come to a final problem which has given rise to considerable difficulty. Where shall we class the payments made for services rendered by certain governmental enterprises, like canals, post-office, telegraph and railroads? Are they taxes, are they fees, are they compulsory payments at all, or are they not rather to be called prices, and classed with the contractual income of the state?

Some writers say that if the government goes into a public business, like the post-office, the charges are compulsory; but that if it goes into a private business, like a shoe factory or a coal yard, the revenue belongs to the industrial domain. This seems to be a decided mistake; for there is no such sharp line of demarcation between a naturally public and a naturally private business. Everything depends on the view taken for the time being as to the policy of governmental interference. The post-office is everywhere in the hands of the government, simply because the enterprise arose at a time when there was no dispute over the policy. The telegraph, the telephone, and still more the railroad are controlled by the government in some countries, and by individuals in other countries, because these industries developed after the discussion as to the limits

[1] *Public Finance*, p. 221.

of governmental interference arose. Where shall we put the gas industry, which in some municipalities is a public, and in others a private, business? Where shall we put the water-supply and the street-railway business? Some countries have monopolies of the manufacture of salt and of tobacco, which are then regarded as modes of taxing the people who use salt and tobacco. Would there be any difference in principle if the government went into the coal business or into the shoe business, in order to tax the people using coal or shoes? It might indeed be very bad policy for the government to extend its functions; but there is no natural and immutable line of cleavage between a public and a private business, between a monopoly of tobacco and a monopoly of bread or of iron. The limit is always fixed in accordance with temporary public feeling as to the proper social policy; but the question as to how far vital public interests are at stake has been answered, and will always be answered, differently in different countries and in different ages.

The distinction, therefore, is not, as most writers have assumed, dependent on the nature of the enterprise.[1] As a matter of fact, the payment for the same service may be a price in one state, a fee in a second, or a tax in a third. The explanation of the difficulty is to be sought in an elaboration of the very principle which has just been employed to show the difference between special assessments, fees and taxes. In other words, the controlling consideration in the classification of public revenues is not so much the conditions attending the action of government or the kinds of business conducted by the government as the economic relations existing between the individual and the government.

[1] For instance, Wagner classes telegraph and postal charges among fees, railroad charges among industrial revenues. Schall limits fees to services for "essential state purposes" (*wesentliche Staatszwecken*). Compare Schönberg's *Handbuch der politischen Oekonomie*, iii. (3d edition), p. 98. Roscher (*Finanzwissenschaft*, p. 22) and Vocke (*Die Abgaben, Auflagen und die Steuer*, pp. 223–565) also except payments for post, telegraph and railroads from the category of fees.

Let us attempt to make this clear by taking up in turn the various classes of revenue.

The simplest case arises when government decides to go into a purely private business. The government sees private individuals making money out of certain occupations, and considers why it also should not do likewise. It therefore enters upon the business, and conducts it in precisely the same way as would an individual. Such instances were very common in former times, when governments carried on all kinds of private occupations, such as manufacturing pottery, loaning money, or conducting commercial enterprises; but in modern times this has become less usual. Many states, nevertheless, still own real estate, either renting or utilising it and selling the produce in the open market; some states still carry on a banking business; and others deal in commodities, like Holland in tobacco, Chili in guano, and India in opium. In all such cases the chief consideration with the government is fiscal; and the charges are precisely the same as would be made by private individuals. In fixing the price, the government is actuated by the same motives that obtain in private business, whether the business be competitive or monopolistic. It is immaterial to the purchaser whether he buys from the state or from a private person; for he has to pay the same in each case. The commodity or service supplies his own private wants, and there is nothing public about the transaction except the mere accident that the seller is a public agent rather than a private person. The charge made by the government is therefore a *quasi*-private price; it is a purely contractual payment, resting on an agreement between the government and the purchaser. The special benefit which the individual receives is to him the controlling consideration; and the matter of general interest or of public purpose is only an incidental matter.

We now come to the next case, where the government decides, for special reasons not purely fiscal, to enter upon certain enterprises which have more or less of an industrial

nature. It is found by experience that the retention of these enterprises in unregulated private hands is not thoroughly satisfactory. The government, therefore, either leaves these occupations to private initiative, but subject to careful regulation, or takes such business into its own hands. The reason for interference is not public gain, but public policy; it is now a matter of common interest, and no longer purely and solely of private interest.

The familiar examples of such enterprises are the post-office, the telegraph, the telephone, the railway, the water, gas and electric-light supply. These are often called economic monopolies, because in them through the working of economic forces competition tends to become entirely inoperative. In most cases, too, they can be carried on only in virtue of some privilege or franchise conferred by the government. The public interest is therefore admittedly strong; and whether it takes the shape of governmental regulation or of governmental ownership is, for our special purpose, immaterial.

Let us assume the latter case. The problem then arises: What is the nature of the charge made by the government for the service or for the commodity which results from the operation of these enterprises?

The chief point is still the private interest of the individual. He buys his gas or his telegraph service to satisfy his private wants, very much as he would buy it from any individual or corporation. But a new element has entered, —the element of public interest, the satisfaction of the wants which one feels as a member of the community. The very reason why these enterprises have been made government enterprises is that the individuals who compose the community feel that they have a common, public interest in the assumption of the business by the government. They believe in municipal water-supply, for instance, because they are convinced for various reasons that this business ought not to be left in private hands. The government, indeed, may make a charge, which is undoubtedly a price paid by the individual; but it differs from private prices. In the case

of the private business the monopoly seeks only the greatest possible profits; in the case of the public monopoly the government seeks the greatest possible public utility. Even when the government makes a high charge, it does not aim simply at the maximum monopoly profits; for the public element always modifies the charges in some particular. If it did not so modify the charges, or at all events give better facilities for the same charge, there would be no reason for the assumption of the business by the public.

The charge to the individual is thus a price; but, instead of being *quasi*-private, it is now a public price. The relation of the government to the individual is not the same as in the preceding case. The special benefit to the individual, although it is still preponderant, is relatively less; the public purpose has become of more importance.

We come now to the really important point: The feelings of the citizens may undergo a further change, and the government may conclude to manage the enterprise in a different way. The element of private interest or special benefit may diminish, and the feeling of public interest may increase so as to become the controlling consideration. The government, because of these changed conditions, will now decide no longer to run the business on the principle of profits. It will reduce the charges somewhat, so as perhaps only to cover the cost of operation, or not even to cover this cost. While it will still roughly endeavor to charge each individual according to the benefit he derives, it will still further modify these charges in the direction of the public interest, charging less to those who can afford it less. In other words, special benefit to the individual is still measurable and charged for; but since the common interest of the community is now of more importance, the charge for special benefit may be slightly modified by other considerations, as in the case of the postal service, where newspapers are put into a lower class than letters. The charge to the individual has now become a fee.

Finally, another change may occur. The citizens may

become convinced that the public purpose has become the exclusive consideration, and that the special interest of the individual is swallowed up in the general interest. The government will now entirely abandon the principle of charging according to special benefit, for one of two other methods: it will either make no charge at all to the individual for the special service; or, if it still makes a slight charge, it will levy this not according to the principle of special benefits, but primarily according to the principle of faculty or ability to pay. The expenditure must indeed be defrayed, but it will now be met by a general charge on the whole community, or by a charge upon that section of the community which avails itself of the service; but even in the latter case it will not measure the special charge to the individual by the benefits he may personally receive. In other words, the payment is now a tax—in some cases general, in others special.

Let us illustrate this process: While a railway is in private hands, the individual traveller or shipper pays a private price. If the government buys up the railways and manages them in precisely the same way, the payment made by the individual is still a price—a *quasi*-private price, because demanded by the government acting as if it were a private party. But the government, although it still seeks to make a profit, is likely soon to introduce some changes in the public interest. Because of the resulting changed relations between the enterprise and the patron, the payment becomes a public price. After a short time the government may reduce its charges considerably, barely covering the cost, and may modify them still further in regard to individuals or to sections of the country by considerations of public policy. The payment is then practically a fee or toll. Finally, the demand may be made in the public interest, as in Australia to-day, for free railway travel. The payment then made by the community to defray the gratuitous railway service would be a tax. In the case of the common highways and the canals, this same evolution is discernible; and the final stage of free travel has actually been reached.

As another illustration take the water-supply. At first often in the hands of a private company, it may then be managed by the city, but according to the same principles. Every one pays in proportion to his consumption, but pays more than it costs the city to supply the water; the enterprise is managed on the principle of profits. Then comes a change. The city, still charging according to consumption, limits its charges to cost. Then often comes another change; and the city, while still trying to make both ends meet, often charges each individual a lump sum, but makes the richer consumer pay more than the poorer, even though he consumes no more. Finally, we reach the stage already attained in some European cities, and now demanded for Detroit by Mayor Pingree, where the water is supplied to the citizens without charge, and where the expense of water-supply is put in the same category as the expense of street cleaning. The charge for water-supply has thus run through the various stages — private price, *quasi*-private price, public price, fee, and tax. Some cities, indeed, may have jumped over the intermediate stages, may have started with the final stage, or may never have reached this stage. In fact, although this is unusual, the principle of development may even be reversed, the public interest may lag, and the methods of private management may again be introduced. The principle itself is, however, everywhere discernible, whether it works forward, as it usually does, or backward, as in some exceptional cases.

Again, at the present time the charge for a postal stamp, like a canal or road toll, is almost everywhere a fee;[1] yet the charge might be so high that the special benefit would become a special burden, and the payments would become

[1] As early as 1765 Benjamin Franklin perceived, in part at least, the difference between a fee and a tax. In reply to the question of the parliamentary committee, "Is not the post-office a tax as well as a regulation?" he replied, "No: the money paid for the postage of a letter is not of the nature of a tax: it is merely a *quantum meruit* for a service done." Dowell, *History of Taxation and Taxes in England*, ii., p. 46. Franklin, however, failed to see that it might become a tax.

taxes on communication or on transportation. This was very common in former times. Highways were at first in private hands, and the charge was an extortion levied by the feudal lord. Later the charge became a monopoly tax on transportation; then it became a toll; until to-day the charges have generally disappeared, and the highways are managed on the principle of gratuitous service, and are supported out of the proceeds of a general tax.

What has been said of the railway and of the water-supply, of the postal and of the highway systems, may be repeated of all other governmental enterprises — the canal, the telegraph, the telephone, the gas and the electric light, the horse railway and the trolley line, the docks, the markets and the ferries. Moreover, if the socialistic scheme is ever introduced, the same principle will apply to all the cases of governmental management of what once were private enterprise. Whether the government ought to assume these enterprises is, of course, a question quite apart from this discussion of the economic and fiscal nature of the payments made by the citizens.

The demands made by government for supplying the individual with commodities or services differ in character, then, according to the economic relations between the government and the individual. Just as a fee may become a tax, so it may become a price and *vice versâ*. While a price can never be a tax, the payment for the same service may take the form of a price in one state, a fee in a second, and a tax in a third. The real test is the economic relation between the individual and the government, and the relative strength of the individual private interest as compared with the common or public interest.

While there is thus a clear distinction, chiefly of degree, between a price and a fee, and between a fee and a tax, we find in actual life some payments which combine separate elements, and which it is difficult for any one but a trained observer to classify. Take, for instance, the combination of price and of tax. If the liquor business is in private hands

and the government imposes a tax on each glass sold, the individual pays a certain amount which includes both price and tax. If the price of a glass of liquor was five cents and the government levies a tax of one cent, the individual pays six cents, of which five is the price, and one is the tax. When the government has a monopoly of the liquor manufacture or trade, as in some countries, the relation is exactly the same, and the charge may be even more than six cents. In fact, that is generally the reason why the monopoly is introduced; but it is only the surplus over five cents that is the real tax. The same reasoning applies to other fiscal monopolies, like the tobacco or the sugar or the salt monopoly; the amount which the individual pays over and above what he would have to pay to a private vendor is the indirect tax. This might be true also of the charges for railway or for water-supply; but at present rarely applies, because they are not fiscal monopolies. They may be monopolized by the government; but in almost every case the object is not to raise the price, but to diminish the price — not to make profits, but to secure general social utility. Yet just as the French and Italian governments impose taxes on the private railway tickets, the amount of which is separately printed, thus enabling the purchaser to distinguish between the price and the tax, the distinction might be made if the railways were owned and managed by the government. The payments would be economically separable.

In the same way, as has already been abundantly illustrated, a given payment may include a fee and a tax. Governments, however, do not usually make this sharp distinction. For instance, some American states speak of insurance fees; other states call the identical payments insurance taxes. In some of the Southern states agricultural fees are sometimes called fertilizer taxes; and on the continent the terms "fees" and "taxes" are often indiscriminately applied. Practically, this may not always be of great importance; but in theory the distinction is clear, and it is beginning to be recognized by the courts.

A more difficult and more confusing case arises when one payment is levied in the form of another, as when a public price is levied in the shape of a tax. Take for instance the water or the gas supply. In Europe, when the towns bought out the private water or gas companies, they at first continued, as some do yet, to charge according to individual consumption. In some cases, however, for purposes of convenience, they assumed that each household would use a certain quantity; and as some of the local taxes were levied on the occupier, they simply added a certain amount to the tax, as in some English towns where a special water rate is levied like the other local rates, or as in Austria where an addition is made to the local tax on house rent. The payment is nevertheless a price, and not a tax; for if more than the assumed normal quantity is used by any one, especially by a business man or by a factory owner, the charges are increased according to the consumption. If the charges were reduced, or if all idea of special benefit were abandoned and the charge were assessed on the whole community or on part of the community irrespective of the relative quantities consumed, then the payment might become a fee or even a tax, whether general or special. As a matter of fact, however, in most places to-day the payment is still a price, even though sometimes levied in the shape of a tax. Thus, the English have a separate class of municipal revenues called income from "gas and water undertakings," which shows that the distinction is dimly recognized. In New York the charge for Croton water is technically called the "water rate" or "water rent," although most people call it the water tax, and confound it with a genuine tax. Here, it is true, this "rate" is paid separately; but in some of the European cities, for purposes of convenience, it is simply added to an existing tax. Nevertheless so long as the economic relation of individual to the government is different, the charges, even though confused under the same appellation, are really distinct.

VI. *Conclusions.*

To sum up the preceding discussion, we find that under actual conditions all public revenues are either gratuitous, contractual or compulsory contributions; that the compulsory contributions are levied in virtue of the power of eminent domain, of the penal power (either as a separate power or as the fiscally important part of the police power), or of the taxing power; and, finally, that the taxing power manifests itself in the three forms of fees, special assessments and taxes.

In regard to the charges known as prices, there is no doubt that we must put *quasi*-private prices under the head of contractual payments; but public prices — the charges made for industrial enterprises under certain conditions — occupy a middle position, and might be called semi-compulsory. If the government manages an enterprise just like an individual, the price is virtually a contractual payment; if the government makes the whole community or part of the community pay, it is a compulsory payment; but if the government employs the intermediate principle of charge, the payment is neither wholly contractual nor wholly compulsory, but contains elements of each. The classification would then be as follows: —

Revenues.	Gratuitous		Gifts.
	Contractual	Public Property and Industry	Prices.
	Compulsory	Eminent Domain	Expropriation.
		Penal Power	Fines and Penalties.
		Taxing Power	Fees.
			Special Assessments.
			Taxes.

But if the real distinction is, as we have suggested, the economic relation of the individual to the government, the classification of charges would depend upon the importance of the individual interest measured by the special benefit to the individual, as compared with the common interest or public purpose measured by the ability of the individual to contribute to public charges. In the one case

the individual is the chief or only factor; in the other case the individual sinks his own importance in the common welfare of the community, and whatever benefits he derives come to him only incidentally as a result of his membership in the community. At one extreme lie prices, which depend upon the relation of the government to some particular industry or individual; at the other extreme lie taxes, which depend upon the relation of the government to all industries or individuals; midway between these extremes lie fees. From this point of view, if we omit, as of no importance, expropriations and fines, there are only three great classes: *viz.*, prices, fees and taxes. The essential characteristic of a fee is the existence of a measurable special benefit, together with a predominant public purpose: the absence of public purpose makes the payment a price; the absence of special benefit makes it a tax.

As these elements are, however, present in varying degree in different payments, the charges shade off into each other almost imperceptibly, forming intermediate classes which are of great practical importance. Thus the public price has certain elements of the price and certain elements of the fee; but it is of sufficient importance to warrant its separation in a distinct category. Again, as we have seen, a special assessment has many points in common with the fee, but has a decided significance of its own. Our final classification would then be as follows:—

1. Special benefit the exclusive consideration.	Public purpose incidental.	Quasi-private Price.
2. Less special benefit, although still preponderant.	Public purpose of some importance.	Public Price.
3. Special benefit measurable.	Public purpose of still greater importance.	Fee.
4. Special benefits still assumed.	Public purpose the controlling consideration.	Special Assessment.
5. Special benefits only an incidental result.	Public purpose the exclusive consideration, principle of faculty or ability.	Tax.

The above classification would result in the following definitions: —

A quasi-private price is a voluntary payment made by an individual for a service or commodity sold by the government in the same way as a private individual would sell.

A public price is a payment made by an individual for a service or commodity sold by the government primarily for the special benefit of the individual, but secondarily in the interest of the community.

A fee is a payment to defray the cost of each recurring service undertaken by the government primarily in the public interest, but conferring a measurable special advantage on the fee-payer.

A special assessment is a payment made once and for all to defray the cost of a specific improvement to property undertaken in the public interest, and levied by the government in proportion to the particular benefit accruing to the property owner.

A tax is a compulsory contribution from the person to the government to defray the expenses incurred in the common interest of all, without reference to special benefits conferred.

NOTE. — Just as this chapter is going to press the second edition of Bastable's *Public Finance* reaches me. In an appendix to his chapter on Classification, Professor Bastable discusses the general theory. He refers only to my first article, published in 1893, and ignores the second, which changed the theory in some points. In not accepting the distinction between fees and taxes, Professor Bastable puts himself entirely out of touch with all modern writers on finance outside of France. In not accepting the distinction between special assessments and taxes he shows that he is not fully alive to the theoretic importance of the "Betterment" question in England, which is discussed in chap. xi. of this work. As to the question at issue in the treatment of prices, I am content to abide by the above exposition, which is really not touched at all by Professor Bastable's criticism.

NOTE OF 3D ED. — It is gratifying to see that the French and Italian writers have now adopted what is fundamental in the above chapter. See Leroy-Beaulieu, *Traité de la Science des Finances* (6th ed., 1899), I., chap. vii.; and Graziani, *Instituzioni di Scienza della Finanze*, 1897, Book IV., chaps i. and v.

CHAPTER X.

RECENT REFORMS IN TAXATION.

INDUSTRIAL democracy is responsible for many changes, but few are more significant than those effected in the fiscal methods of recent times. In framing these newer systems modern nations have been confronted by two fundamental problems. The first is that of bringing about greater justice in distributing the weight of taxation among different classes of the community; the second is that of correctly apportioning the burdens among the various spheres of government.

The second problem, although of less importance in national than in federal states, has everywhere attracted an increasing amount of attention, owing to the demands made by industrial life upon political organizations, and to the growing complexity in the relations between co-ordinate and subordinate governments. In former times, when local expenditures were insignificant, and when the geographical aspect of industrial relations was simple in the extreme, the question of the due apportionment of public revenues among independent or overlapping jurisdictions scarcely existed.

Important though this be, the growth of industrial democracy has brought into still more prominent relief the difficulties of the first problem. Revenue methods, as they came down to us from bygone centuries, were defective in one of two ways. In some cases they were simply survivals of a system originally just, but which was calculated for more or less primitive economic conditions, or at all events for an economic life which, whether primitive or not, was

fundamentally different from that of modern industrial society. Since political conditions, and therefore fiscal measures, depend in last resort largely on social and economic relations, it was but natural that the revenue system should become antiquated, and that what was conceived in justice should ripen into practical injustice. In many places to-day the fiscal demands of the new social democracy are legitimate protests against the continuance of mediæval survivals in modern life.

In other cases, revenue systems were painfully lacking in another way. It is unfortunately true that the dominant social class has often succeeded in strengthening its hold by thoroughly selfish fiscal expedients. In such cases there was no pretence of equity even in the original imposition of the system. It did not need to grow bad, because it was bad from the very start; it was based not on justice, but on might. With the growth of industrial democracy, however, the maintenance of the old-time abuses became increasingly difficult; one by one they were recognized as such, to be lopped off at the first opportunity. In order to establish the long-delayed equities, it was necessary not only to pull down but to build up. Some, at least, of the recent changes which in themselves seem extremely radical, will therefore appear less extreme when regarded as parts of a larger whole — as a sort of compensation for what there is still left of injustice in existing systems.

Thus it is that tax reform is everywhere in the air. Demanded in some countries because of the divergence between economic conditions and fiscal methods, it is urged in others as a concession to those who have hitherto had less than justice. In both cases it is a product of modern industry and of modern democracy.

In this chapter it is proposed to call attention to the great changes recently introduced in such widely different countries as England and Holland, New Zealand and Prussia — changes, all of them effected within a period of scarcely more than twelve months, and springing from the

same general desire to realize the principles of justice in the relation of the citizen to the public purse.

I. *England.*

As in so many other domains of political science, England has here again taken the lead. The English are not much given to abstract reasoning in politics ; but in the practical working out of political ideals, England has usually led the way. In finance she has taken a similar lead. She was the first important nation to restrict the scope of taxes on consumption and to introduce the income tax ; and at the present time, while scientists the world over are debating the problem of lessening the burdens on the lower and middle classes, she boldly takes steps which in many other countries would, to say the least, be deemed premature. The three great reforms just accomplished in England are the extension of the inheritance tax, the introduction of the progressive principle, and the increase of the minimum of subsistence. Let us discuss these in turn.

The principle of the inheritance tax is not new in England; but its application has hitherto been very unsatisfactory. What are generally called the death duties were until the recent change composed of the following elements : (1) probate duty, a tax of about three per cent on personal property passing by will or intestacy ; (2) account duty, a similar tax on gifts of personalty ; (3) legacy duty, practically a tax on collateral successions to personalty, graded according to relationship ; (4) succession duty, as altered in 1888, a tax on realty, settled personalty and leaseholds, with higher rates for collaterals than for lineals ; (5) estate duty, an additional tax, since 1889, of one per cent on all estates, real and personal, over £10,000. These five taxes really consisted of two classes : the one, represented by the probate duty, being a tax on the total amount of the property, irrespective of the manner in which it was divided, or of the persons to whom it went ; the other, represented by

the legacy and succession duties, being a tax not on the body of the estate, but on the separate shares received by collaterals and outsiders. These five taxes constituted a complex whole, bristling with anomalies and inequalities, of which the most important was the distinction made between realty and personalty, the latter not only being taxed more heavily, but being subject to more complicated and burdensome rules. The act of 1894[1] endeavors to remove these inequalities by imposing, in lieu of most of the previously existing taxes, a new estate duty.

This estate duty is a tax on the capital value of all property, real or personal, which passes on the death of any person. The taxes abolished are the probate duty, the account duty, the estate duty of 1889, the succession duty on lineals and the additional succession duty of 1888, all of which merged into the new estate duty. The only old duties which continue are, as we shall explain in a moment, the legacy duty and, in certain cases, the succession duty.

Under the former system personal property was rated at its capital value, but realty was estimated at a fictitious sum according to the annual value and the varying degrees of interest in the property. In some cases the tax was charged only on the value of a life interest in the property; and where there was no annual value, as in the case of lands held for speculation, there was no tax at all. All these differences are removed by the new tax, which is levied on the market value of the property. In the same way the tax on realty could formerly be paid in instalments, while that on personalty was paid in a lump sum; but now, in order to equalize the taxes, interest is charged on the amounts remaining due until the final instalment is paid. Again, whereas formerly the instalments payable on realty lapsed with the death of the person primarily liable, they are now a charge

[1] The Finance Act, 1894, 57 and 58 Vict. ch. 30. *Cf.* A. T. Layton, *The Finance Act, 1894, in relation to the New Estate Duties, with introduction and explanation.* See also *Table of Income Tax imposed by the Finance Act, 1894, with full text of act relating to Income Tax and notes of explanation.*

on the estate and cannot be avoided. Finally, the tax applies to all death-bed gifts, which are defined to comprise any gift of realty or personalty made within twelve months of death.

It is somewhat confusing to find side by side with this estate duty a so-called settlement estate duty; but the explanation is simple. It is a common practice in England to tie up property by means of settlements, so that the beneficiary is not at liberty to dispose of the property itself, but enjoys only some interest in it, whether for life or for a term of years. It is readily perceived that, if each beneficiary were called upon to pay the tax on the total value of the estate, an injustice would result, especially if there should be more than one devolution under the same settlement. It is therefore provided in the new law that the estate duty shall be payable only once on the value of the property, which shall then be exempt from further payment during the continuance of the settlement. In consideration of this exemption and in order to obviate in part any diminution in the total yield, an additional tax of one per cent, called the settlement estate duty, is imposed on the principal value of the property so settled. An exception is made in the case of husbands and wives; and it is further provided that the additional duty shall not be payable more than once during the continuance of the settlement.

Another point worth mention involves the question of double taxation. In the original draft it was proposed to tax the property, wherever situated, of a person domiciled in Great Britain. It was pointed out, however, that this might involve double taxation where the foreign country itself imposed an inheritance tax on the property lying within its borders. The bill was, therefore, amended so as to permit the amount of the foreign tax to be deducted from the sum payable by the estate in England. This is a simple solution of the question. It may also be added that the tax does not apply to property left to the central or local governments, to universities, to certain pensions, or to single annuities not exceeding £25.

The most significant feature of the new estate duty is the final acceptance of the graduated scale or the system of progressive taxation. Under the preceding laws there was indeed an exemption for very small sums; but that did not mean progressive taxation proper. In the present law the tax begins with a rate of one per cent and increases in twelve successive stages until it reaches eight per cent. Estates under £100 are not taxed at all; from £100 to £500 the rate is one per cent, but so arranged that estates under £300 make a fixed payment of 30*s*., while estates between £300 and £500 are charged a fixed sum of 50*s*. Obviously the rate is more than one per cent on the lower figures of each class. Above £500 the rate increases until the maximum rate is reached at estates over one million pounds.[1] Even these figures do not adequately represent the real charge; for it must be remembered that, in addition to this new estate duty, there still exist a legacy duty and a succession duty. The legacy duty is a tax at the rate of three, five, six and ten per cent, graded according to relationship on personal property going to collaterals. The succession duty as changed by the new law[2] is a similar

[1] The exact figures are: —

Over	£100	to	£500	1%
"	500	"	1,000	2%
"	1,000	"	10,000	3%
"	10,000	"	25,000	4%
"	25,000	"	50,000	4½%
"	50,000	"	75,000	5%
"	75,000	"	100,000	5½%
"	100,000	"	150,000	6%
"	150,000	"	250,000	6½%
"	250,000	"	500,000	7%
"	500,000	"	1,000,000	7½%
"	1,000,000			8%

[2] Under the original law, the rates were as follows: —

Lineal issue and ancestors	1%
Brothers and sisters and their descendants	3%
Uncles and aunts	5%
Great uncles and aunts	6%
Other persons	10%

tax applicable to realty. The two duties together form a collateral inheritance tax, which must be paid in addition to the estate duty, with the important exception that estates not exceeding £1000 are subject only to the latter. The net result is that the rate of inheritance tax varies from one to eighteen per cent of the value of the property.

These are remarkable figures, considerably exceeding those to be found until recently in any other important country.[1] When almost one-fifth of the property is taken by the state, as is the case with large fortunes going to outsiders, we are approaching Bentham's principle of escheat. Compared to the paltry amounts levied before 1898 by inheritance taxes in America, the English figures are certainly striking. The introduction of the progressive principle was indeed hotly opposed, and the familiar cry of socialism was again raised, but all in vain; for the Chancellor of the Exchequer regarded the principle of progression as firmly established by the weight of recent economic authority. He even went so far as to say that it was equally applicable in principle to the income tax, and that the sole reason for his not introducing it there was of an administrative nature.[2] The definite acceptance of the progressive

But as lineal issue and ancestors were exempted when the property paid probate duty, so the exemption now continues, since the new estate duty replaces the old probate duty. The succession duty was levied at a higher rate, and under different conditions; but it is now exactly the same as the legacy duty. They are maintained as separate duties simply because of the body of legal decisions that has grown around them.

[1] In some of the Australian colonies the rates are slightly higher. In Victoria estates of £100,000 pay ten per cent direct tax; and in Queensland the highest rate for collaterals is twenty per cent. The Swiss canton of Uri goes even higher. For the new American tax, see above, p. 135.

[2] In answer to the question why the income tax should not be graduated, he replied: "In principle there is nothing to be said against such a system; indeed there is every argument in its favor. The difficulties which lie in its way are of an administrative and a practical nature, which as yet I have not been able to find means to overcome."—*Budget Speech, April 16, 1894*, Hansard, p. 502. The argument is similar to that contained in my work on *Progressive Taxation*, p. 208.

principle in English politics marks a most important step in the history of public finance.[1]

Side by side with this extension of the principle of ability to pay, went its enlargement in another direction. Under the inheritance tax the large amounts have to pay increased rates; in the income tax, where this was deemed impracticable, a somewhat similar result was reached by making the smaller amounts pay decreased rates. As a result of successive changes, the tax had been so arranged that incomes below £150 were entirely exempt, while incomes between £150 and £400 received an abatement of £120. Under the new law the desire to ease the burdens on the lower classes has resulted not only in an increase of the total exemption, but in an addition to the abatements and in an enlargement of the classes to which abatement is accorded. The limit of total exemption is now fixed at £160; incomes between £160 and £400 receive an abatement of £160; while incomes between £400 and £500 are permitted to deduct £100. To use technical language, while the progressive principle is introduced in the inheritance tax, the degressive principle is extended in the income tax. Both are manifestations of the idea of graduation, according to the doctrine of faculty in taxation.

One other change deserves mention. The landowners made a strenuous opposition to the equalization of the "death duties," maintaining that real estate already paid more than its share in the shape of local rates. To this objection two arguments were opposed. In the first place it was by no means proved that the weight of the local taxes rests on the landowners. Not only are the taxes levied on the occupier, so that the incidence is only partly, if at all, on the owner; but the landowner is largely exempt from what are known in America as special assessments. Secondly, it was contended that there would be

[1] The fear that the new tax portends a breaking up of the large landed estates seems to be groundless. The lawyers are already devising schemes of settlement which will, in part at least, nullify the law.

a better prospect of securing an equitable system of taxation if each tax were made just in itself, without regard to the others. Yet attention was so far paid to the cry raised by the landowners as to lead the government to diminish the burden of the income tax resting on them. It had long been a complaint that real estate was assessed in schedule A at its gross income, not at its net income, thus not permitting deductions for repairs. Under the new act the assessment may be reduced by one-eighth in the case of farms, and by one-sixth in the case of other buildings. This is at once a substantial concession to the landowners, and a decided improvement in the theory of the tax itself. But the change in schedule A and the great extension of the exemption and abatements promised so materially to diminish the yield that it was deemed necessary to increase the rate from sevenpence in the pound, or less than three per cent, at which it had stood some time, to eightpence, or three and one-third per cent.

Finally, attention must be called to the provisions affecting the relation between local and national revenues. For some time there has been growing dissatisfaction with the system of local taxation. During the eighties an attempt was made to remove this in part by the device of grants-in-aid, or subsidies from the general government to the local bodies. In 1888, Mr. Goschen altered the arrangement by allotting to the local bodies a certain percentage of the probate duty. The new law virtually maintains this arrangement by appropriating out of the new estate duty to the reduction of local taxation a sum of one and one-half per cent on the net value of the property which, but for the substitution of estate duty, would have been chargeable with probate duty. Sir William Harcourt made no attempt, however, to reconsider the whole question of the relation between general and local taxes, but expressly left it open for future discussion. Further consideration of this point — perhaps the only important point in which the English system is still defective — cannot much longer be delayed.

It may be interesting to note the probable financial results of these measures. While the income tax at the old figures was estimated to produce £15,200,000, the increase of rate is almost counterbalanced by the changes above alluded to. On the other hand, whereas the "death duties" have been yielding about £10,000,000, the new system is expected to increase the yield to £13,500,000; but as £2,500,000 will go to the reduction of local taxation, the net increase to the imperial treasury, especially in the first year, will be only about one million. The new measures, therefore, are intended not so much to produce more revenue as to introduce more justice and to equalize the burdens on the various classes of taxpayers.

The new budget thus marks a turning-point in English finance, and has already proved itself very popular.[1] To have swept away the anomalies of a great system of taxation, to have definitely introduced the principle of progression, to have removed inequalities in the income tax, and to have greatly increased the minimum of exemption, — these are achievements on which any finance minister might pride himself. The name of Sir William Harcourt, it may safely be affirmed, will hereafter be indissolubly linked in the annals of British finance with those of Peel and Gladstone.

II. *New Zealand.*

While England was battling with these problems, a similar movement was going on at the antipodes. In New Zealand, as in all early communities, the original source of revenue was the general property tax. But this, having obviously become unsuitable to modern conditions, has been modified in several directions. The three recent important changes are the enactment of the income tax, the adoption of the system of graduation, and the exemption of improvements from the land tax.

[1] The issues in the electoral campaign of 1895 did not turn on the budget. Both parties are committed to the income tax, to the "death duties," to the principle of graduation, and to the reform of local taxation.

The first step in the movement was the passage of "The Land and Income Assessment" act of 1891,[1] which replaced the previous "Property Assessment" act. The income tax and the land tax were really distinct measures, although they were generally coupled together, and were dealt with in various sections of the same act; but, although distinct, they were complementary. In framing a scheme of income taxation, three possible methods may be followed. We may attempt to reach the income as a whole, from all sources, and have a general income tax; or we may separate the sources of income and levy a distinct tax on each, as on land incomes, on business incomes, on professional incomes, and so forth; or, thirdly, since the yield of land everywhere forms so important a share of national income, we may split the tax into only two parts, one of which endeavors to hit the income from land, while the second is intended to reach all the other forms of income. Since the selling value of real estate, in modern communities where land is continually bought and sold, is approximately the capitalized value of the income, it makes little difference whether we assess the land on its income value or on its property value. New Zealand, following the example of some of the Swiss commonwealths, adopted this third method; that is, New Zealand endeavored substantially to reach the entire income by levying a land tax on the capitalized income from land, and by assessing the income from all other sources through the so-called income tax.[2]

The income tax is levied on corporations (or "companies") and individuals. The former are taxed on their net income, but the security holders are then exempt. In most cases

[1] An act to regulate the assessment of land and income for the purposes of taxation. Sept. 8, 1891.

[2] The colony of Victoria has very recently followed the other principle in levying a general income tax. By "the Act to impose a Tax on Incomes," Jan. 29, 1895, incomes below £200 are free; on incomes from personal exertion, the rate is fourpence per pound up to £1200, sixpence per pound up to £2200, and eightpence per pound on larger amounts; on incomes from the produce of property within Victoria the rates are exactly double.

profits from mortgages are not included in income, because mortgages are treated as interests in land and are accordingly subject to the land tax.[1]

Individuals are assessed on their income derived either from business, or from employments or emoluments. This last category is very broad, including profits from "the exercise of any profession, employment, or vocation of any kind, or from any salary, wages, allowances, pension, stipend, or charge or annuity of any kind not charged on land." In order to prevent double taxation, however, it is provided that when any business or other income is derived from land, a sum equal to five per cent on the value of the land assessment may be deducted from the taxable income. Not only private corporations, but all local authorities and individual employers, are required to furnish full lists and salaries of persons employed by them. The income tax is payable only on the excess over £300, and certain minor deductions are allowed. The rate is fixed by periodical acts, according to the needs of the colony; in 1893[2] it was fixed at a shilling in the pound, or five per cent. In the case of private individuals, incomes from £300 to £1000 are charged two and one-half per cent, while the full rate is assessed only on the excess above £1000; in the case of corporations the rate is uniformly five per cent. The £300 exemption is accorded only to persons domiciled or permanently resident in the colony.

The second half of the general scheme of taxation is the land tax. An important and valuable feature of the law is the treatment of mortgages, which are regarded for the purposes of taxation as real estate. The landowner is taxed on the value of the land, less the amount of the mortgage which is required to be registered; and the mortgagee is taxed on the value of the mortgage. Land under £500 in

[1] But under a recent amendment, banking, loan, building and investment companies must include in their return of income the income from mortgages, and are liable for income tax, not for land tax. *Cf.* the Land and Income Assessment Act Amendment Act, Oct. 2, 1893.

[2] An Act to impose a Land Tax and an Income Tax, Oct. 6, 1893.

value is exempt, and accordingly the exemption is accorded to mortgages of the same amount. The mortgage, however, is assessed to the mortgagee at its actual value — a provision of importance when the value of the security does not equal the mortgage debt. The result is that the government gets its tax on the whole value of the land, that there is no double taxation on the mortgagor, and that the mortgagee or owner of personal property loaned on the land must bear his due share of taxation. The law does not attempt to consider the ultimate incidence of the tax; but so far as it goes, it is constructed on scientific principles. The provisions apply, as pointed out above, to corporations as well as to individuals, with the exception of banking and loan associations.

An interesting section is that dealing with the tax on improvements, which are defined to include "houses and buildings, fencing, planting, draining of land, clearing from timber, scrub, or fern, laying down in grass or pasture, and any other improvements whatsoever, the benefit of which is unexhausted at the time of valuation." In the original law such improvements were exempted up to the value of £3000; but under the amendment of 1893 the exemption is extended to the value of all improvements, of whatever amount, the tax now being levied only on the bare value of the land. The significance of this change will be estimated in a moment.

The most important feature of the new legislation is the adoption of the progressive system. The Australasian colonies have been growing restless under the gradual aggregation of land into the hands of a few proprietors, and some of them have attempted to check the process by a system of progressive inheritance taxes, like that just introduced into England. In New Zealand, however, where most of the large fortunes have hitherto been due to dealings in land, it was thought that the same result might be reached by a progressive tax on living landholders, instead of on the estates of deceased property owners. Accordingly in 1891, a graduated tax was imposed in addition to the ordinary land tax. The latter was fixed at one penny in the pound, while the

additional graduated tax began at an eighth of a penny and rose to a penny and six eighths. In 1893, however, the rate of progression was still further increased, in order to obviate any diminution of revenue which might result from the complete exemption of all improvements. Accordingly, at present the additional tax varies from one eighth of a penny to twopence in the pound, with the result that the largest estates now pay a total land tax of threepence in the pound.[1] But the tax is even larger than would appear from these figures, because of the provision that in the case of the graduated tax the value of the mortgage cannot be deducted from the value of the land. Deduction is permitted only in the ordinary land tax, or in the case of estates under £5000 in value. On the other hand, the mortgage itself is never liable to the graduated tax. We thus have for the first time in any English-speaking country a graduated scale in a direct property tax. England and her colonies lead the way not only in progressive inheritance taxes, but also in progressive property taxes. The drift is unmistakable.

It might be thought by some that the adoption of this progressive land tax implies a process of confiscation by the government. In order to preclude all possibility of such an interpretation, the New Zealand law has inserted an ingen-

[1] The scale as amended is as follows: —

When the value is	£5,000 and less than	£10,000	one-eighth of a penny.
" " " "	10,000 " " "	15,000	two-eighths of a penny.
" " " "	15,000 " " "	20,000	three-eighths of a penny.
" " " "	20,000 " " "	25,000	four-eighths of a penny.
" " " "	25,000 " " "	30,000	five-eighths of a penny.
" " " "	30,000 " " "	40,000	six-eighths of a penny.
" " " "	40,000 " " "	50,000	seven-eighths of a penny.
" " " "	50,000 " " "	70,000	one penny.
" " " "	70,000 " " "	90,000	one penny and one-eighth.
" " " "	90,000 " " "	110,000	one penny and two-eighths.
" " " "	110,000 " " "	130,000	one penny and three-eighths.
" " " "	130,000 " " "	150,000	one penny and four-eighths.
" " " "	150,000 " " "	170,000	one penny and five-eighths.
" " " "	170,000 " " "	190,000	one penny and six-eighths.
" " " "	190,000 " " "	210,000	one penny and seven-eighths.
" " " "	210,000 or exceeds that sum		two pence.

ious clause, which reminds us in some respects of the ἀντίδοσις in ancient Athens. If a man thought that he had been assessed too high for the extraordinary property tax or liturgy, as compared with a neighbor who had been passed over, he could call upon the latter to assume the tax; and in case of the neighbor's refusal, he could demand an "exchange of property," out of the proceeds of which the tax was defrayed. In New Zealand the government takes the place of the third party. In other words, if a taxpayer thinks that he is assessed too high, he can call upon the government to purchase his land at his own original valuation; he has the alternative to pay the tax at the official valuation or to sell the land at his own valuation. It is readily seen that in this way no property can be confiscated. On the other hand, the government in its turn may purchase the land at the assessed valuation plus ten per cent additional, in case the owner will not consent to the official valuation. As a matter of fact, advantage has already been taken of the provision in the case of the so-called Cheviot estate, of over 84,000 acres, which was returned by the owners in 1892 at £260,220, but which was assessed by the government at £304,826. The government refused to reduce the assessment, and the owners called on the government to purchase the property. This was done in 1893, and the government is now proceeding to carve it up into small plots and gradually to dispose of it. The colonial treasurer states that the revenue will give a handsome return on the purchase money.[1]

It remains to estimate the meaning of the exemption of improvements. The American newspapers have been filled with accounts of the introduction of the single tax in New Zealand, and the enthusiastic followers of Henry George have been jubilant. But when the law and the official reports are carefully scrutinized, the enthusiasm seems to be somewhat misplaced.

There can indeed be little doubt that Mr. George's views exerted some influence in the enactment of the law; but it

[1] *Financial Statement in Committee of Supply* by the Colonial Treasurer, 1893, p. 19, Wellington, 1893.

must be remembered that the provisions of the law may be explained without any reference to those particular views. In young and rapidly growing communities, concessions are frequently made which would be out of place amid more settled industrial conditions. Thus the social effects of taxation or of the remission of taxation are clearly recognized in the laws of some American states, which exempt from assessment for a limited period new industrial enterprises, timber lands and various kinds of improvements on land. There is in such cases no implication that the owners of these establishments or forests or improvements are free from fiscal obligations toward the state; for to the extent that they have property or income, they also are ultimately liable. But it is deemed so desirable to foster these new forms of enterprise that the community as a whole is willing to bear the additional temporary burden in order to realize more permanent benefits. The government of New Zealand stated at the time the bill was introduced that their object was to induce large landowners to improve their lands, and thus to bring about an increased national production.[1] Looked at from this point of view, there is much to be said for the provision, which, however, does not mean that the small farmer will be as much benefited as some might imagine. The latest official assessments show that, whereas in the country districts or counties the unimproved value of the lands exceeds the value of the improvements, the reverse is true in the towns or boroughs. The figures for 1893 are as follows:[2] —

	Actual Value.	Value of Improvements.	Unimproved Value.
Counties	£85,818,167	£27,922,735	£57,880,233
Boroughs	36,406,862	18,442,562	17,907,662
Totals	£122,225,029	£46,365,297	£75,787,895

[1] "It will be admitted that the repeal of the tax on improvements should have the effect of encouraging the owners of large properties to expend money in improving their land, and thereby add to its productiveness. This would be a direct advantage to the colony as a whole, both by causing an expenditure on labor, and by adding to the products." — *Financial Statement in Committee of Supply*, 1893, p. 18.

[2] *New Zealand Official Year Book, 1893*, by E. J. von Dadelszen, p. 429.

That is to say, in the boroughs the improvements are worth actually more than the bare land, while in the country districts the land is worth more than twice as much as the improvements.

The claim of Mr. George that the small farmer will benefit at the expense of the city lot-owner is therefore disproved in New Zealand as it has been in other parts of the world.[1] The figures show that it was not so much the object of the law to discourage the urban landowner as to reach the large rural proprietors. As between the small farmer and the city landowner, the law is distinctly unfavorable to the former, for the exemption of improvements removes over one-half of the townsman's tax, but less than one-third of the farmer's tax; that is, it relatively increases the tax of the farmer. Were the land to be owned by small farmers, the system would be unendurable; but it is precisely because the land is not owned by small farmers that the law was enacted. The exemption of improvements was a corollary of the graduated tax on land. When any part of the improvements was exempt, the tax was graduated; and when the exemption was made complete, the scale of graduation was increased.

The claim that the new law means the introduction of the single tax is still further weakened by the fact that it went hand in hand with the extension of the income tax on other sources than on land. Finally, the contention that there is any single tax at all in New Zealand is rendered absurd by the fact that in 1894 the revenues from the land amounted to £285,000 out of a total revenue of over four and a quarter millions, the larger part of which was derived from indirect taxes. In other words, the "single" tax yields about six and a half per cent of the colonial revenues, and of course, when we take into account the local revenues, composed chiefly of the general property tax, a much smaller proportion of the total income. The reader is thus in a position to judge how much foundation there is for the state-

[1] *Supra*, pp. 85–90.

ment that the recent prosperity of New Zealand is to be ascribed to the "single" tax. The real intent of the new legislation is to make the large property owners pay more than they have hitherto been paying, and to subject to taxation other classes that have hitherto been exempt.[1] It is thus an attempt to realize the principle of faculty in taxation.

III. *Holland.*

In the review of the tax reforms in England and New Zealand we have seen that the changes were largely the outgrowth of popular agitation; in the states now to be discussed the reforms were more directly the result of scientific discussion. This is especially true of the Netherlands, where all the recent tax laws are due to N. G. Pierson, the author of the ablest Dutch treatise on economics and finance. Mr. Pierson was at one time a university professor, and was for many years the president of the Bank of the Netherlands. For several decades he had been devoting himself to the consideration of fiscal problems, and when in 1891 he was made Minister of Finance, he immediately set about the task of bringing the tax system more into accord with the demands of modern theory. In his budget for 1892 he sounded the keynote of the new programme — a more equitable distribution of the burden of taxation — claiming that the poorer classes were taxed too much, and the wealthy too little. The problem was, how to bring about an equilibrium.

The Dutch revenue system was composed in large part of indirect taxes. Import duties, it is true, were very light, but the internal revenue or excise taxes were still burdensome. The direct taxes comprised, as in France and some other countries, a land tax, a business tax, and a "personal tax" calculated according to house rent. The business tax

[1] "The end sought to be attained by the whole scheme is to compel contribution to the requirements of the state according to the ability of those who are called upon to contribute thereto." "Statement by the Commissioner of Taxes in New Zealand," *N. Z. Official Year Book for 1894*, p. 44.

had grown to be very unequal, being based on rough outward signs; and the personal tax, which took the same proportion from large and small rentals, proved to be a serious drain on the poorer classes. Whole sections of the population, moreover, were virtually exempt. Mr. Pierson therefore proposed a fourfold reform: —

(1) The abolition or decrease of the more vexatious excise duties; (2) the enlargement of the business tax into a general income tax; (3) the reconstruction of the personal tax through the introduction of a progressive scale and through other changes; (4) a reform of local taxation so that the local and general taxes together might form a harmonious whole. Of these reforms only the first two were accomplished, when the ministry was overthrown on an entirely different point. Yet even these partial reforms represent a distinct step in advance and deserve our attention.[1]

The first step was the reduction in the excise duties. In 1892 the excise on soap was abolished, and that on salt was reduced from nine to three florins per hundred kilogrammes. The vexatious registration duty on the transfer of land was lowered from 6.27 to 2.15 per cent, or in the case of a second transfer within the same year from 1.09 to 0.40 per cent. With the exception of a minor tax on meat, there were then left only the duties on spirits and on sugar, which were retained as in other countries as essential features of every tax system. This reform in itself proved to be a distinct relief to the poorer classes.

Of more importance were the changes made in the direct taxes. The business tax, akin to the French *patentes*, had become in many ways inadequate and unjust, and was now to be replaced by a tax on the actual, rather than on the assumed income and was furthermore to be extended so as to reach income from other sources than from business. Pierson deemed it

[1] The best account of the recent changes, of the discussion in Parliament and of the previous attempts at tax reform, will be found in an elaborate article by G. M. Boissevain, "Die neueste Steuerreform in den Niederlanden," in *Finanz-Archiv*, vol. xi., pp. 419–746. This also contains the text of the laws themselves.

wise to separate this tax into two parts, one of which should apply to the income from property alone, while the other should include all other incomes. In the first case, however, it was thought best to make the tax in large part one on the property itself, rather than on the income from property. The earlier law thus provided for what is termed the property tax.[1]

The question that immediately presents itself is: Why should there be a separate property tax? The answer is: Largely for administrative purposes. The administration of the tax would thereby be put into the hands of officials already familiar with the land and inheritance taxes, while the income tax would naturally fall to the officials acquainted with the business tax; secondly, the local authorities might desire to add a percentage to the property tax rather than to the income tax; thirdly, it would be the most convenient method of providing for a different or higher taxation of income derived from property than of income derived from labor. In addition to these points the rather doubtful argument was advanced that the same amount of capital affords different rates of income according to the varying security of the principal, and that the poor man who cannot afford to make much of a choice generally prefers securities with higher rates of interest; to tax income instead of capital would thus be to favor the rich man. Finally, in answer to the objection that a non-dividend-yielding security would also be taxed, it was urged that this could not be avoided even under an income tax; for if the capital value of a security should fall in any one year more than the amount of the interest or of the ordinary dividend, the income tax would be paid not from income, but from capital.

Dubious as some of these reasons were, they found favor with Parliament. Even in the property tax, however, the principle of income was not wholly abandoned; for in the case of real estate the capital value is fixed at twenty times the annual revenue, unless the owner elects to be assessed according to selling value. It may be said in passing that the

[1] Act of Sept. 27, 1892.

property tax applies only to individuals, not to corporations; and that furniture, objects of art, scientific apparatus, life insurance policies and a few other categories[1] are not included in taxable property.

A point of considerable importance is that the old land tax is levied in addition to the property tax. The landowners had for many years blocked the way to any change in the system by asserting that to tax their land by the land tax and again by the property tax would involve gross double taxation. Mr. Pierson, however, had long ago espoused the capitalization theory of the land tax, and had maintained that an exclusive tax on land becomes a kind of rent-charge, depressing the selling value of the land by a sum equal to the capitalization of the tax. The new purchaser, he argued, makes an allowance for the tax in the purchase price, and buys to that extent an exemption from future taxation. Since, therefore, all other owners of property were to be taxed for the first time, it would be unjust to exempt the landowners from the property tax. The land tax is a rent-charge; the property tax is a real tax. The situation was deemed to be the same as in England, where the land tax exists side by side with the income tax on land.

Were this chapter anything more than a bare summary of recent legislation, it might be shown that there was a partial fallacy in Mr. Pierson's reasoning. For the theory of amortization, as it is called, holds good only on the assumption that the land tax is exclusive;[2] yet, as a matter of fact, even under the old Dutch system, there was also a tax on business or business property. Be that as it may, Mr. Pierson's argument prevailed; but several concessions were made to the landed interest. The rate of the land tax was reduced from seven to six per cent; the transfer duties on

[1] Such as articles of food; the right to pensions or annuities; property of which the usufruct is enjoyed by some one else; debts, wages and other income which is yet due.

[2] For a fuller statement of the amortization theory, including a reference to Pierson's earlier scientific views, see my work *On the Shifting and Incidence of Taxation*, pp. 52–62.

land were abolished; the official assessment of land for the property tax was purposely kept somewhat below the actual value; and land used for agriculture, by a legal fiction to be stated in a moment, was exempted from the income tax. In these several ways it was sought to remove the imputation of double taxation. It may be questioned, however, whether this object was entirely attained.

The fundamental feature of the new system is the co-ordination of the property tax with a complementary income tax, for the purpose of reaching through a combination of the rates the entire taxable faculty of the individual. The official name of the income tax is "tax on income from occupations and other incomes,"[1] although it is generally called the business tax. The tax is levied on all "gains and wages," which are defined to include "the amount of all net revenues from business, trade, manual labor, occupation or enterprise from temporary work or activity of any kind, from contractual or non-contractual profits, whether in cash or in securities." The law applies to corporations as well as to individuals, while the property tax applies only to individuals; but if the corporation pays the income tax, individual security holders are exempted. In order to obviate the double taxation which would result from taxing business capital through the property tax and business profits through the income tax, recourse is had to an expedient so familiar in Switzerland and also practised in Massachusetts. The property tax is presumed to reach an income of four per cent; hence the income tax is payable in almost all cases only on the surplus profits above four per cent. In this way the property and the income taxes together are deemed to reach the whole income.[2] In the case of capital invested in land, the income is declared to be legally equivalent to four per cent. Agricultural capital is hence exempt from the income tax, as it had previously been free from the

[1] Belasting op bedrijfs- en andere inkomsten. Act of Oct. 2, 1893.

[2] For a fuller discussion of this arrangement from the standpoint of theory, see *supra*, p. 99 and pp. 216–218.

business tax, although the land is liable to both the property and the land tax.

In respect of the rate of taxation the new Dutch laws recognize the principle of differentiation as well as of progression. To differentiate the rate by taxing incomes from property more heavily than incomes from labor was, as we know, one of the avowed reasons for the enactment of the two separate laws, and did not meet with much opposition. But when the project of graduating the tax was introduced, the discussion, as in all such cases, grouped itself about two main points. On the one hand the partisans of a strict proportional rate maintained that progression means socialism and confiscation; on the other hand the extremists declared their belief in the socio-political theory of taxation, according to which progressive taxation should be utilized as an engine to remove inequalities in fortune. Pierson took the middle ground, declaring his opposition to both these theories and maintaining that a moderate progression was a logical conclusion from the theory of faculty in taxation. "Progressive taxation," as he put it, "must never be a principle (as the socialists would have it), but only the application of a principle."

The practical arrangement was as follows: Property under 13,000 florins is entirely exempt; from 13 to 14,000 the tax is fl. 2; from 14 to 15,000 it is fl. 4. If the property exceeds fl. 15,000 but is less than fl. 200,000, the tax is 1.25 per mill for the surplus over fl. 10,000. Property of fl. 200,000 would therefore be taxed fl. 237½. For every fl. 1000 above fl. 200,000 there is an additional tax of fl. 2. In other words, there is a deduction in all cases for a certain part of the property (fl. 10,000); there is a complete exemption for a minimum of subsistence (fl. 13,000), and an abatement for a somewhat larger amount (fl. 15,000); and finally there is a slightly progressive rate. For if income on property is reckoned as four per cent, the property tax of 1.25 per mill (on sums below fl. 200,000) equals an income tax of three and one-eighth per cent; while a property tax of two per mill (on sums above fl. 200,000) equals an income

tax of five per cent. Owing to the deduction of fl. 10,000 as well as to the complete exemption of fl. 13,000 and the abatements for fl. 13,000 and fl. 14,000, the property tax computed as an income tax would vary from zero to almost five per cent. This will be seen from the following table: —

Property. fl.	Tax. fl.	Amount per Mill.	Percentage of Income.
12,000	0	0	0
13,000	2	0.15	0.37
14,000	4	0.29	0.72
15,000	6.25	0.41	1.02
20,000	12.50	0.62	1.55
25,000	18.75	0.75	1.87
50,000	50.00	1.00	2.50
100,000	112.50	1.12	2.80
150,000	175.00	1.17	2.92
200,000	237.50	1.19	2.97
210,000	257.50	1.23	3.07
220,000	277.50	1.26	3.15
250,000	337.50	1.35	3.37
500,000	837.50	1.67	4.19
1,000,000	1,837.50	1.84	4.59
3,000,000	5,837.50	1.95	4.86
5,000,000	9,837.50	1.97	4.92
10,000,000	19,837.50	1.98	4.96
20,000,000	39,837.50	1.99	4.98

In the income tax it was proposed to observe the same principle of graduation, but the rate was to be less. Since fl. 200,000 is equivalent to fl. 8000 income, the original plan was to tax incomes from labor above a certain minimum two per cent up to fl. 8000, and three and one-fifth per cent above that, instead of the three and one-eighth per cent and five per cent rates of the property tax. That is, incomes from labor were to be taxed three-eighths less than incomes from property. It was decided, however, to make the minimum of subsistence higher in the income tax than in the property tax, partly because of the existence of indirect taxes, partly for other reasons. The consequence was the necessity of two schedules in the income tax, one for incomes from labor alone, and one for taxpayers already subjected to the property tax. In the former case the tax is levied only on the

surplus above fl. 650; but as the property tax is levied only on the surplus above fl. 10,000 (which corresponds to an income of fl. 400), the tax on incomes from property is levied on the surplus above fl. 250 (or the difference between fl. 650 and fl. 400). The higher rate, therefore, begins in this case not with fl. 8000 (as in the case of labor incomes), but with fl. 8200. This would result in the following schedules, which, although seemingly complicated, are the results of simple computations: —

Schedule A. Incomes from Labor.		Schedule B (for those liable also to the Property Tax). When Property amounts to fl. 13,000 or fl. 14,000.		When Property varies between fl. 15,000 and fl. 200,000.	
Income.	Tax (in florins).	Income.	Tax (in florins).	Income.	Tax (in florins).
650 to 700	1	250 to 300	2	250 to 300	1.25
700 " 750	2	300 " 350	2.75	300 " 350	2
750 " 800	2.75	350 " 400	3.50	350 " 400	2.75
800 " 850	3.50	400 " 450	4.25	400 " 450	3.75
850 " 900	4.25	450 " 500	5	450 " 500	4.25
900 " 950	5	500 " 550	5.75	500 " 550	5
950 " 1000	5.75	550 " 600	6.50	550 " 600	5.75
1000 " 1050	6.50	600 " 650	7.25	600 " 650	6.50
1050 " 1100	7.25	650 " 700	8	650 " 700	7.25
1100 " 1150	8	700 " 750	8.75	700 " 750	8
1150 " 1200	8.75	750 " 800	9.50	750 " 800	8.75
1200 " 1250	9.50	800 " 850	10.25	800 " 850	9.50
1250 " 1300	10.25	850 " 900	11	850 " 900	10.25
1300 " 1350	11	900 " 950	11.75	900 " 950	11
1350 " 1400	11.75	950 " 1000	12.50	950 " 1000	11.75
1400 " 1450	12.50	1000 " 1050	13.25	1000 " 1050	12.50
1450 " 1500	13.25	1050 " 1150	14	1050 " 1100	13.25
1500 " 1600	14	Over 1050	14 +	1100 " 1200	14
1600 " 8200	14 +			Over 1100	14 +

2 per cent on surplus over fl. 1500.

Over fl. 8200, fl. 148 + 3.20 per cent on surplus over fl. 8200.

2 florins for every hundred florins on surplus over fl. 1050.

But if the income, together with 4 per cent on the taxable property, exceeds fl. 8150, a tax of 1.20 per cent is payable on the excess.

2 florins for every hundred florins on surplus over fl. 1100.

But if the income, together with 4 per cent on the taxable property, exceeds fl. 8200, a tax of 1.20 per cent is payable on the excess.

When property exceeds fl. 200,000, the tax is 3.20 on every hundred florins income over fl. 200.

It may be said, in passing, that there are two additional schedules in the income tax; corporations being taxed in all cases two and one-half per cent, and foreign travelling salesmen paying a fixed tax of fl. 15. Of the administrative features of the laws the chief point is that the returns both of property and of income rest on the principle of self-assessment, supplemented by careful official scrutiny.

After the passage of these two acts Pierson prepared to undertake the reform of the personal tax and of the local revenue system. He had gone so far as to contemplate the introduction of the progressive scale into the tax on house rentals; but before the bill could be discussed and before his wider plans for other changes were completed, he was compelled to resign for reasons entirely disconnected with these financial problems.

The reform of the Dutch tax system is thus only partial; but enough has been accomplished to entitle Pierson to a high place in the ranks of fiscal reformers. The exaggerated burdens on the lower classes have been lessened, the tax on incomes has been generalized and equalized, and the principles of progression and of differentiation have been introduced; in short, there has been a notable step taken toward the realization of the doctrine of faculty. Although open to criticism in some of its details, the change represents undeniable progress.

IV. *Prussia.*

While England, Holland and New Zealand have been occupied chiefly with the reform of general state taxation, Prussia has been fortunate enough to take one step further and to address herself to the solution of a problem which the reformers in other countries declare to be their next point of attack. The reform of local taxation, and the establishment of proper relations between the general and the local revenue systems constitute problems which to-day confront all countries; for no really harmonious system of taxation can ever

be attained until the claims of conflicting or overlapping jurisdictions are satisfactorily adjusted. In federal states like Germany, Switzerland and the United States the matter is complicated by the demands of the central government; but in all countries the fiscal relations between the state and the local spheres of government are more or less confused and unsatisfactory. The immense increase in local needs has everywhere so pushed this problem into the foreground that the solution just inaugurated in Prussia is a matter of far more than mere local importance.

In order to understand the situation, it is necessary to dwell for a moment on the Prussian tax system. In Prussia, as well as in the other German states and in most of the remaining countries of the continent, the state system has been based on the principle of taxing product. The old general property tax long since disappeared and was replaced by a system which attempted to reach the constituent elements of produce. Instead of taxing a man personally on his property, the plan was to tax the various sources of revenue themselves. The thing, and not the person, was primarily responsible; and therefore the new taxes received the name of real taxes, as compared with the former personal taxes.[1] These taxes on product (*Ertragsteuern*) as they are called in Prussia, or real taxes (*impôts réels*) as they are called in France, everywhere included taxes on the product of land, of buildings and of business. In addition to these, one or two other taxes are sometimes made use of, to round out the system. What was omitted in the three taxes above was the product of money lent at interest and the produce of labor. Some of the German states therefore, desiring to be logical at all costs, added a tax on interest (*Kapitalrentensteuer*) and a tax on wages (*Lohn- und Besoldungsteuer*). In most cases, however, the wages tax was omitted because the laborer already bore more than his share, and the tax on inter-

[1] This nomenclature must, of course, not be confused with that sometimes employed in America, where real taxes mean taxes on realty, and personal taxes denote taxes on personalty.

est was replaced by a more general tax which endeavored in some way to reach the individual condition of the taxpayer. Thus in France shortly after the Revolution the "personal and movable" tax was introduced, which tried to reach a man's individual condition through his expenditures;[1] while in Prussia the three taxes mentioned above were supplemented by a class tax, which was to reach the taxpayer in some rough proportion to his revenue.

In the course of time, however, it came to be recognized that product was for many reasons too rough a test of faculty; and the tendency, recent evidence of which has been seen above, was to replace product by income. Thus, the class tax in Prussia was somewhat modified as early as 1821 in the direction of an income tax, until after successive changes in 1851 and 1873 it became a complete general income tax in 1891. The land, house and business taxes were nevertheless retained. This mixture of taxes on product and on income was recognized as illogical, but was defended on the ground that the government could not yet dispense with the former. At the same time the business tax was radically reformed, so as to afford a far more accurate criterion of real business income. The reform of the income tax and of the business tax, while exceedingly important, will be passed over here, partly because the laws were enacted several years ago and have been well treated as separate measures elsewhere,[2] and partly because the principles involved are about the same as those alluded to in the reform of Dutch taxation. Above all, the real signifi-

[1] In France, it is true, there is an additional tax, "the door and window tax." But all French writers confess that it is retained simply because of the difficulty of finding anything acceptable to take its place.

[2] *Cf.* J. A. Hill, "The Prussian Income Tax," *Quarterly Journal of Economics*, vi., p. 207, and an article on "The Prussian Business Tax," by the same writer, *ibid.* viii., p. 77. The most elaborate treatment of the subject is to be found in two articles by Professor A. Wagner, "Die Reform der direkten Staatsbesteuerung in Preussen im Jahre 1891," *Finanz-Archiv*, viii., pp. 551–810, and xi., pp. 1–76. *Cf.* the articles by Jastrow, "Studien zur preussischen Einkommensteuer," in *Jahrbücher für Nationalökonomie und Statistik*, lviii., pp. 634, 839, and lix., p. 75.

cance of the recent Prussian legislation lies in a different domain, and has not yet been discussed by any English or American writer.

The Prussian legislator, in desiring to reform the whole tax system, was confronted by several tasks. In the first place, in order to realize the principle of the taxation of persons rather than of product, it was necessary to supplement the income tax by some other, so that their joint yield would render it possible to dispense with the taxes on product; secondly, it was necessary, as in Holland and elsewhere, to provide for a differentiation as well as for a progression of taxation; thirdly, since local needs differ from general needs, a distinction had to be drawn between the sources of local and general revenue. Separate taxes thus had to be assigned to each sphere of government activity.

Let us see how these several tasks were accomplished. Just as the English reforms were largely the work of Harcourt, and as the Dutch reforms were due to Pierson, so in Prussia the chief credit must be given to the finance minister, Dr. Miquel, although he was here simply walking in the path cleared for him by the foremost economists.[1]

When the income-tax law of 1891 was discussed, the hope was expressed that its yield might be sufficient to enable the state to do away with the taxes on product; for notwithstanding the labored arguments of some writers, the simultaneous existence of income and of produce taxes was recognized

[1] The leading German articles on the topics are as follows: J. Jastrow, "Die Vermögensteuer und ihre Einfügung in das preussische Steuersystem," *Jahrbücher für Nationalökonomie und Statistik*, lix., p. 161; R. Friedberg, "Zur Reform der Gemeindebesteuerung in Preussen," *ibid*, pp. 321–341; F. Adickes, "Ueber die weitere Entwickelung des Gemeinde-Steuerwesens auf Grund des preussischen Kommunalabgabengesetzes vom 14 Juli, 1893," in *Zeitschrift für die gesammte Staatswissenschaft*, li., pp. 410–452, 583–658. The best treatment of the whole topic, including a history of the earlier system, a description of the government bills, and the discussions in Parliament, as well as the text of the law itself with commentaries, is to be found in F. Adickes, *Das Kommunalabgabengesetz vom 14 Juli 1893, für den praktischen Gebrauch mit einer geschichtlichen Einleitung und Erläuterungen versehen*, Berlin, 1894, 8vo, 396 pp.

as illogical. Even though the principle of progression was applied to the income tax, it was thought that the yield would fall far short of the desired amount. Since an increase of the rate above the four per cent fixed in the law as a maximum was impossible, an earnest effort was made to expand the existing collateral inheritance tax into a direct inheritance tax. This plan, however, came to naught; and nothing remained, therefore, but to continue the old taxes on product.

The agitation, nevertheless, went on and was helped along by what was conceded to be a defect in the income tax. Although the principle of progression had been introduced, no provision had been made for a differentiation of the rate. Income from labor was taxed at the same rate as income from property. Dr. Miquel therefore proposed to introduce a supplementary property tax, hoping in this way to achieve both of the desired results. Since this property tax, like all nominal property taxes, would really be paid out of the income of the property, it was thought that it would act as an additional tax on income in so far as the income was derived from property. Incomes from labor would pay only the income tax; incomes from property would pay both income tax and property tax. Thus a practical differentiation would be introduced. This supplementary tax, moreover, would be levied on the property owner and would be a substantial addition to the personal taxes, rendering it possible for the state to dispense with the taxes on product.

This reasoning prevailed, and resulted in the enactment of the law of 1893, which was, however, not to go into force until April 1, 1895.[1] The law provided for a "supplemen-

[1] Ergänzungssteuergesetz von 14 Juli, 1893. The tax is arranged in classes so that the one-half mill rate applies only to the lowest figures in each class.

	Property.		Tax.
Thus	6,000 to 8,000	marks pay	3 marks.
	10,000 to 12,000	"	5 "
	20,000 to 22,000	"	10 "
	40,000 to 44,000	"	20 "
	60,000 to 70,000	"	30 "

From 70,000 to 200,000 m. the tax increases 5 marks for each 10,000 m. Above 200,000 m. the tax increases 10 marks for each 20,000 m.

tary tax" of five-tenths, or one-half of one, per mill, on all property. Exemption is granted to all property of less than 6,000 marks; to all persons whose income does not exceed 900 marks, provided their property does not exceed 20,000 marks; and to women wage earners and minor orphans whose income does not exceed 1200 marks, and whose property does not exceed 20,000 marks.

What is more important is the change that was now made possible in the local revenue system, and in its relation to the state system.

The German local revenue system was exceedingly unsatisfactory. In most of the towns indirect taxes on consumption played a considerable rôle; in some places indirect taxes on transfers yielded a substantial sum. But so far as direct taxes are concerned, we find everywhere that the towns simply added a percentage to the state taxes, which in most cases would be taxes on product, like the land, house, business, interest, and wages taxes. Where state income taxes existed, a local percentage was also added, so that the amount of income taxes alone paid by a townsman often exceeded eight or ten per cent. Only in four towns, among them Berlin and Frankfort, were there any taxes on rentals. In order to present the facts clearly, the table on the following page is appended. In Prussia the matter was still further complicated by the so-called Lex Huene of 1885, which provided that a certain share of the imperial duties on agricultural products should go to the local divisions instead of to the state.

The shortcomings of this whole system were so obvious and became so intolerable that Prussia boldly attempted to abolish them at one stroke. The fundamental principles that emerged in the discussion of the subject during the session 1892–93 may be summarized as follows.

The relation of the individual to the local community is somewhat different from his relation to the state at large. The town is to a certain extent an association of business interests. While therefore the obligation of the citizen to

	Population.	Total Taxes.	Taxes on Consumption.	Per cent of all Taxes.	Taxes on Transfer of Realty.	Per cent of all Taxes.	Taxes on Real Estate.	Per cent.	Taxes on Business.	Per cent.	Taxes on Wages and Professions.	Per cent.	Taxes on Interest.	Per cent.	Taxes on Income.	Per cent.	Taxes on Rentals.	Per cent.	Total Taxes per Head of Population.
Berlin	1,534,050	34,266,666	575,858	1.68	...	...	5,083,690	14.84	...	...	...	...	...	...	15,502,232	45.24	12,760,686	37.24	22.34
Breslau	329,683	5,530,558	1,698,376	30.71	...	...	561,816	10.16	...	...	...	...	...	...	3,165,090	57.23	...	...	16.78
Cologne	276,000	4,655,896	...	...	...	...	544,220	11.69	135,369	2.91	...	...	...	...	3,912,299	84.03	...	...	16.87
Magdeburg	195,650	2,644,832	173,769	6.57	...	...	236,089	8.93	...	...	...	...	...	...	2,203,016	83.30	...	...	13.52
Frankfort o/M.	176,320	6,091,559	...	...	497,631	8.17	...	...	8,077	0.13	...	...	...	...	4,226,242	69.38	1,189,215	19.52	34.55
Altona	136,650	2,625,528	...	...	127,215	4.85	1,291,797	49.20	...	...	...	...	...	...	1,139,237	43.39	...	...	19.21
Cassel	71,420	1,209,770	467,489	38.64	...	...	203,260	16.80	...	...	...	...	...	...	526,819	43.55	...	...	16.94
Wiesbaden	63,380	1,515,408	516,332	34.07	...	...	247,628	16.34	67,484	4.45	...	...	...	...	662,846	43.74	...	...	23.92
Frankfort o/O.	56,720	616,827	...	...	...	...	93,638	15.18	...	...	...	...	...	...	515,280	83.54	...	...	10.87
Leipsic	213,430	4,935,025	...	...	501,808	10.17	917,134	18.58	...	...	...	...	...	...	3,455,096	70.01	...	...	23.12
Dresden	270,570	5,656,010	1,440,176	25.46	494,085	8.74	915,378	16.18	...	...	...	...	...	...	1,307,287	23.11	1,253,820	22.15	20.90
Munich	312,380	6,927,683	2,154,201	31.10	...	...	1,423,130	20.54	1,008,043	14.55	416,570	6.01	923,313	13.33	...	...	...	...	22.18
Nuremburg	136,830	2,274,725	749,131	32.93	...	...	497,220	21.86	468,305	20.59	115,324	5.07	299,149	13.15	...	...	...	...	16.62
Augsburg	72,970	1,365,631	572,786	41.94	...	...	181,735	13.31	183,566	13.44	59,282	4.34	159,217	11.66	...	...	...	...	18.71
Stuttgart	138,010	3,493,109	990,054	28.34	...	...	996,537	28.53	946,157	27.09	90,433	2.59	300,991	8.62	...	...	...	...	25.31
Mannheim	74,440	1,497,306	218,780	14.61	...	...	312,657	20.88	509,526	34.03	...	...	126,116	8.42	359,221	23.99	...	...	19.85
Karlsruhe	70,960	960,744	280,152	29.16	...	...	202,266	21.05	116,629	12.14	...	...	142,894	14.87	182,694	19.02	...	...	13.52
Mayence	71,450	1,854,653	540,025	29.12	...	...	330,323	17.81	341,416	18.41	...	...	97,583	5.26	558,358	30.11	...	...	25.96
Darmstadt	56,080	1,305,060	472,164	36.18	...	...	199,308	15.27	133,485	10.23	...	...	115,577	8.86	386,328	29.60	...	...	23.27
Strasburg	121,940	2,379,735	1,984,373	83.39	...	...	134,576	5.66	151,204	6.35	...	...	...	...	...	...	66,793	2.81	19.52
Mülhausen	75,970	1,540,340	1,147,123	74.47	...	...	130,189	8.45	187,379	12.20	...	...	...	...	...	...	...	...	20.28
Metz	59,500	922,641	812,512	88.06	...	...	40,942	4.44	43,779	4.74	...	...	...	...	...	...	...	...	15.51

NOTE.—The figures are in marks. The table is taken from Neefe, *Statistisches Jahrbuch Deutscher Städte*, *Zweiter Jahrgang*, 1892, pp. 384 *et seq.* It is quoted in part in the essay by Adickes, p. 415, who has arranged the cities according to their location in the various commonwealths. The third annual statistical publication for 1893 omits the figures of taxation. They will be given in the issue for 1894, which has not yet appeared.

contribute to the general burdens should be regulated by the principle of faculty or ability, it is eminently proper that in the case of the local bodies more attention should be paid to the principle of benefits. In the local divisions, an extension should be given to the principle underlying what in the United States are called special assessments and fees. An argument of somewhat the same nature — a discussion of its precise terms would carry us too far astray — led to the demand for the real estate tax as one of the chief sources of local revenue. A tax on real estate is a real tax, a tax on product; it is not a personal tax. Moreover, the real estate tax is an especially good local tax, partly because the benefits of local expenditure accrue primarily to real estate and thus increase the faculty of the owner; partly because making it a local tax would at once remove from the public arena the unseemly disputes about inequality of rates and about equalization, with which the public is scarcely less familiar abroad than in America.

On the other hand, the income tax is unsuitable for a local tax, chiefly because amid modern complications income cannot well be localized. The sphere of local indirect taxes, also, should be restricted, because local taxes on consumption are apt to press with undue severity on the poorer classes. But since other classes, as well as real estate owners, share the duty of contributing to local burdens, the real estate tax should be supplemented by a business tax, in the shape of a real tax, rather than of a personal tax. Thus the conclusion is easily reached: personal taxes in the shape of an income tax and of a supplementary property tax for the state government; real taxes, like the land tax, the house tax and the business taxes for the local bodies. If we join to this a diminution in the local indirect taxes, and an increase of special assessments and of fees, we shall have a system which is logically defensible and practically workable.

In accordance with these ideas were passed the three great laws of July 14, 1893. The first law, which has already

been mentioned, provided for the supplementary property tax. The second law[1] abolished as sources of state revenue the real taxes — that is, the land tax, the house tax, the business tax and the old tax on mines, the first three being handed over to the communes or local bodies, and some minor changes being made in the business tax with the same end in view. This law, like the others, was not to go into effect until April 1, 1895; partly in order to leave time for the arrangement of the local system, partly in order to enable the state income tax to be perfected so that its increased yield would more than compensate for the loss of the taxes on product. Finally, the third law[2] regulated the sources of local revenue.

According to this law, the local bodies are not only permitted, but directed, to impose fees and special assessments in cases where the local action results in a special measurable benefit to the individual; and the extent of these charges is definitely regulated. Indirect taxes are not forbidden, but it is provided that no new or increased taxes may be imposed on meat, corn or bread, potatoes or the articles of common consumption. Direct taxes may be imposed on real estate and on business. In special cases a local income tax may be levied as an addition to the state income tax; but a maximum is fixed and permission is given to substitute in its stead taxes on expenditure, which must be so arranged as not to impose on the poor a heavier burden than on the rich. In no case may a local general property tax be imposed, nor may the existing taxes on rentals be increased. The statute does not affect in any way the rights of the local bodies to revenue from industrial enterprises or municipal monopolies, with the one exception that the charges must be sufficient to provide a revenue at least equal to the interest on the outlay

[1] Gesetz wegen Aufhebung direkter Staatssteuern. This is printed in *Finanz-Archiv*, x., pp. 795–801.

[2] Preussisches Kommunalabgabengesetz. This has been published in *Finanz-Archiv*, x., pp. 318–341. The best edition is the one of Adickes, mentioned above, with commentary and notes.

and a yearly addition to the sinking fund. The law closes with some minor provisions applicable to county or provincial revenues.

Into the details of these laws it is manifestly impossible to go. Were there space, it would be fruitful to call attention to some errors in the general theory and to some mistakes in the practical arrangements. Thus the abolition, rather than the improvement, of the rentals tax ; the retention of the indirect taxes ; the failure to provide for a state inheritance tax ; and the inadequate working out of the principles of the corporation tax constitute undeniable blemishes. All these defects, however, sink into insignificance when compared with the one great boon — the final acceptance of the principle of the segregation of source as between local and state revenues. For this all reformers have been contending the world over — in France as in Australia, in Italy as in America. To have successfully accomplished this result and to have brought it into harmony with the doctrine of faculty, is an achievement of sufficient importance to entitle Dr. Miquel to a high place in the ranks of fiscal reformers. The year 1895 will mark an epoch not only in Prussian, but also in international finance.

After this survey it is needless to point out the lessons applicable to the United States. The economic conditions of the civilized world are everywhere fast becoming the same ; and upon the changes in economic conditions depend the changes in financial systems. In old Europe as well as in young Australia the same tendency is unmistakable — the trend to greater justice in taxation. When four widely distant countries reform their systems almost simultaneously, and upon the same general lines, the inference is irresistible that the causes of the movement are of far more than mere local significance. To shut our eyes to this world-wide movement would be supreme folly ; to profit by its lessons and to bring our own system into line with the demands of modern science and of modern conditions will be no less wise than it is inevitable.

CHAPTER XI.

THE BETTERMENT TAX.

It has often happened that the technical name of a new custom has been borrowed from abroad; but it is rare to find a foreign institution described by an exceedingly uncommon term, which is then naturalized on the assumption that foreign usage is being followed. This, however, is the case with the "Betterment Tax" in England. The institution is indeed found in America, but the name is unusual there. Exactly when and how the term came to be introduced into England is uncertain;[1] but nine out of ten Englishmen, when using the expression, think that they are following the American custom. It has now become so current in England that it may be considered as firmly established.

I. *The Origin.*

The principle of betterment has recently been defined by an official commission as "the principle that persons whose property has clearly been increased in market value by an improvement effected by local authorities, should specially contribute to the cost of the improvement."[2] Another official report deals specifically with "assessments according to benefits (betterment or amelioration)," and defines the

[1] The Duke of Argyll, in a speech in the House of Lords, referred to it as an "absurd, foreign and vulgar" word. Mr. Baumann, on the other hand, says: "The word is respectable," but "the thing is not." Almost the only state in America where the term "betterment tax" is to be found is Massachusetts: and even this is true mainly of the earlier laws and cases.

[2] *Report from the Select Committee of the House of Lords on Town Improvements (Betterment)*, 1894.

custom as "assessment according to benefits, and the interception by charge upon property of a portion of the value added to such property by the expenditure of public money for improvement."[1] To all Americans it will be apparent at once that what we are dealing with is nothing but the system of special assessments.

What appears almost self-evident to Americans is hotly disputed in England. In the United States the local taxes, so far as real estate is concerned, are imposed on the owner of the land; in England the local rates, as they are called, are levied on the occupier. In the United States the tax is assessed on all land; in England it is assessed only on productive or rent-yielding land. In the United States, therefore, it was comparatively easy to add to the existing tax on the proprietor this newer system of charges; in England the process is more difficult, because it implies not only a change in the principle of charge, but also a change in the method of assessment. Not the occupier, but the owner of the land, is to be directly reached. Thus the proposal, which in America is regarded as in harmony with vested interests, is viewed by its opponents in England as an attack on the rights of private property.

Yet, curious as it may seem, the custom of assessments for special benefits is of English origin. In the year 1662, an act was passed to authorize the widening of certain streets in Westminster and providing for the defrayal of the cost by voluntary subscriptions. In case this should not suffice, the commissioners to lay out the streets were empowered to charge the owners of the property in proportion to the benefits received.[2] The important clause reads:

"And whereas, the houses that remain standing . . . will receive much advantage in the value of their rents by the liberty of ayr and free recourse for trade and other conveniences by such enlargement, it is enacted . . . that . . . a jury . . . shall . . .

[1] *Orange Book of the London County Council*, entitled *Precedents of Assessment according to Benefits*, 1893.

[2] 13 and 14 Chas. II., chap. 2, sec. 29.

judge and assess upon the owners and occupiers of such houses, such competent sum or sums of money or annual rent, in consideration of such improvement and renovation as in reason and good conscience they shall judge and think fit."

Five years later a similar act was passed, to provide for the rebuilding of the city of London after the great fire. This contained an almost verbal repetition of the clause just cited. The changes were: first, that the charge was then to be made "in consideration of such improvement and melioration," instead of "improvement and renovation"; and, secondly, that, whereas the charge of 1662 was to be assessed on the "owners and occupiers," the new charge was to be levied on the "owners and others interested, of and in such houses," according to "their several interests."[1] That this law was not a mere dead letter is shown by a passage in *Pepys' Diary* where the actual operation of "the benefit of the melioration" is interestingly described.[2]

Thus, over two hundred years ago the principle over which so earnest a contest is now being waged was in full operation and in the very city where it is vehemently assailed as an unjust system of foreign importation.

The law of 1667 is interesting in another respect. Not only were new streets to be laid out, but the commissioners were empowered to design and set out "the numbers and places for all common sewers, drains and vaults, and the order and manner of paving and pitching the streets and lanes within the said city or liberties thereof." Then follows the significant section:[3] —

> For the better effecting thereof, it shall . . . be lawful . . . to impose any reasonable tax upon all houses within the said city or liberties thereof, in proportion to the benefit they shall receive thereby, for and towards the new making, cutting, altering, enlarging, amending, cleansing and scouring all and singular the said vaults, drains, sewers, pavements and pitching aforesaid.

[1] 18 and 19 Chas. II., chap. 18, sec. 24.

[2] *Pepys' Diary*, under date Dec. 3, 1667. The passage is quoted in the London County Council's *Orange Book of Precedents*, p. 37.

[3] 19 Chas. II., chap. 3, sec. 20.

Here not only is the word "benefit" used, but the charge is called a tax. Still more important is the fact that while the custom itself seems to have died out in England, this act was the model upon which was framed the first law providing for special assessments in America. The province law of 1691 of New York followed the law of 1667 almost word for word; and from New York, the custom later spread all over the United States. The system of special assessments or "betterment," although it fell into disuse in the country of its origin, is thus primarily an English institution.[1]

II. *Betterment and Taxation.*

We now come to the question which really lies at the root of the whole controversy in England: Is the so-called "betterment tax" a true tax or "local rate"? What appears to be merely a question of terminology has led to a great deal of confusion. For if it is a tax or rate, why should it be levied differently from other rates? And if it is not a tax or rate, under what authority can it be levied at all?

We must revert to what has already been said in a previous chapter, but it is necessary to discuss the subject somewhat more in detail.

As we have already seen, when the state makes the individual give up a part of his property, it does so primarily through the power of taxation,[2] which in this wider sense denotes a forced contribution. Governments may levy, and have always levied, these forced contributions according to different principles — either that of benefit, or that of ability. They may say to the individual: we are

[1] Rosewater, *Special Assessments* (mentioned *supra*, p. 283), was the first to prove this. It is worthy of note that we find two instances already in New Amsterdam in 1657 and 1660. See Paulding, *Affairs and Men of New Amsterdam in the Time of Governor Stuyvesant*, 1843, pp. 14 and 16. But each was a sporadic case, applying only to a specific street.

[2] The revenue from expropriation and fines may be passed over as insignificant.

performing a special service for you, and shall make you pay for this peculiar benefit which you derive; or they may say: we are expending certain moneys in the public interest, and shall ask you to pay your share, according to your means. The latter payment is called a tax in the narrower sense of the word. The question at once presents itself: Is not the former payment also a tax?

The difficulty here arises from confounding special with general benefits. The theory of benefits or of protection is true in the sense that if the government taxes the people, it is in duty bound to protect them and to confer upon them the advantages of good government. That is what is meant in America by the doctrine of "public purpose." Taxes must be used for public purposes, and must confer upon the public the usual benefits of government. But this is not the theory of benefit as the term is commonly employed. The theory of benefit claims that the government must give to each individual a return equivalent to the tax he has paid. If this means anything at all, it means that benefit and taxation are correlative. In this sense, the claim is unfounded; for the government, when it levies a tax, never guarantees to do a particular thing for the particular individual, or to confer upon him a special benefit. No one would be justified, legally or morally, in claiming a restitution of a tax because the action of the government was not worth quite so much to him as he thinks it is worth to his neighbor. The benefits of state action, for which a tax is paid, are quantitatively unmeasurable; or, so far as they may be measured, they accrue to the individual not as a special result, but as an incidental result of his participation in the common weal. The benefits of the army, of the judicial system, of the consular and diplomatic service, and of all the other objects for which expenditures are made and taxes in general are levied, do not accrue to any one taxpayer more than to another. Even in local finance, where a general tax is levied to defray all the local expenditures, it cannot be maintained that the

benefits arising from the action of the local judiciary, of the police, of the fire service, of the board of health, or of the other departments of local government are separately measurable for each individual. One may value the benefits greatly, while another may feel less interest in that particular branch of the administration; yet this cannot be permitted to change the measure of their obligations to the government. Every member of the community for which these expenditures are made must contribute to these expenditures in proportion to his means to pay. If the government neglect its duty and fail in protecting his person from violence or his property from fire or from destruction, he may use his political rights in overturning or in improving the administration; but he has no shadow of a claim for a diminution of his tax rate. Protection and taxation, in this sense, are not correlative.

We have thus far been dealing with general taxes, whether federal, state or local. A general tax is a tax levied for general public purposes. But it may happen that government desires to raise money for some special purpose, and the tax is then called a special tax. Thus there may be a special tax levied upon the whole community to defray the cost of a war, or there may be a special local tax to defray the cost of some particular department. So, too, in a few of the American states, like New Jersey, we find not only a special school tax, but special taxes, of the same nature as the English local rates, for police or for lighting or for fire purposes. Here, it is true, a special class of the community is singled out; and one area is subject to the poor rate, while perhaps another is subject to the watching or the lighting rate. The charge, however, is still a tax, levied according to the principle of ability; for although the particular area which is benefited is put into a separate class, the benefits to the individuals of the class are general, not special, exclusive, or individual benefits. Although all the persons liable to this special tax are subject to the tax only because the class, as a whole, derives a benefit, yet each individual derives a

benefit, if at all, simply as a member of the class; the government does not do any one particular thing for him, as apart from the other members of the class. The "rate" is a special tax as opposed to a general tax, because it defrays a special expenditure of government; but as to every one within the class, the tax is payable whether the particular individual receives much or little benefit.

In the poor rate, for instance, the original law expressly provided for assessments according to the ability of the parishioners, or, as it was subsequently expressed, *ad statum et facultates* of the inhabitants. The degree of benefit accruing to each ratepayer is immaterial; for the rate is levied on all the inhabitants according to the English test of ability to pay, which was originally general property, but which has since then been confined to productive real estate.

On this poor rate all the other local taxes, with only one or two exceptions, were built up. Of the church rate nothing more need be said, since it has always been imposed on the same principle as the poor rate.[1] The sewers rate was originally levied by a law of 1427, which, as well as its successor of 1531, does indeed speak of the benefits or advantages to be derived. Some recent writers have been misled by this statement into the belief that it is a precedent for the principle of betterment. A careful reading of the original acts, however, proves that the benefit is jurisdictional only, *i.e.* that a certain district is to be selected where the inhabitants derive a benefit from this governmental action, but that the rate or tax is to be assessed on each individual according to the quantity of his lands, irrespective of the degree of benefit conferred upon him.[2]

[1] The church rate is said formerly to have been made by common estimation. "What principle this common estimation was founded on does not appear, but it was always undoubtedly in reference *ad statum et facultates*, that the burden was imposed." *Report of the Poor Law Commissioners on Local Taxation*, 1843, 8vo edition, p. 43. *Cf. ibid.*, p. 22.

[2] The law of 1427 enjoins the commissioners "to enquire . . . by whose default such damages have there happened, and who doth hold lands and tenements, or hath any common of pasture or fishing in those parts, or else

At that period the test of ability to pay was the quantity of land, but later the test became the rental value of the land. It has, moreover, been repeatedly decided that the sewers rate must be levied on the principle of ability, so that the official commission tells us that the sewers rate "is commonly imposed in exactly the same manner" as the poor rate.[1]

Even American commentators have been led astray by the example of the sewers rate.[2] It is true that landholders lying beyond the area in question cannot be taxed, because they do not belong to the class; but the essential point is that all the members of the class are taxed, not according to the benefits they receive, but according to their abilities. The official commission tells us explicitly: "It is an indispensable condition (of the sewers rate) that a person taxed may by possibility receive benefit from the expenditure of the tax, and therefore holders of mountainous or high ground which cannot be surrounded, are in general ex-

in any wise have, or may have, the defence, profit and safeguard, as well in peril nigh as from the same far off, by the walls, ditches, gutters, sewers, bridges, causeys and wears, and also hurt or commodity by the same trenches, and then to distrain all them for the quantity of their lands and tenements, either by the number of acres or by their plow lands, for the rate of the portion of their tenure, or for the quantity of their common of pasture or fishing, together with the bailiffs of liberties and other places of the county and places aforesaid." 6 Hen. VI., chap. 4.

The law then directs the commissioners to make, repair, or cleanse or stop up the trenches, *etc.*, "so that no tenants of lands or tenements . . . nor other of what condition, state or dignity, which have or may have defence, commodity and safeguard by the said walls, ditches, *etc.* . . . or else any hurt by the same trenches . . . shall in anywise be spared." *Ibid.*, chap. 5.

The law of 1531 contains almost the same words, and assesses the rate "after the quantity of their lands, tenements and rents, by the number of acres and purchase, after the rate of every person's portion, tenure or profit." 23 Hen. VIII., chap. v. There is no mention of any varying degree of benefit as the basis of the rate.

[1] *Report of the Poor Law Commissioners on Local Taxation*, p. 22.

[2] Cooley, *Taxation*, chap. xx. Baumann, *Betterment* (1893), p. 6, correctly enough calls attention to this: "It is most important not to confuse rating zones . . . with betterment. All the individuals within a rating zone pay the same proportion irrespective of the *quantum* of benefit which each individual may receive. But the *quantum* of benefit received by the individual is the essence of betterment."

empt. *Still, the exact measure of the benefit is not the measure of the liability to be taxed.*"[1]

The nearest approach to the principle of benefits is found in some of the English lighting and watching rates, where a distinction is drawn between land proper and improved property, and where the occupiers of land pay only one-third as much as the occupiers of houses and other buildings, possibly on the assumption that they do not get so much benefit.[2] Yet even here there are only two classes — lands and improvements — and the charge upon the individual occupier is not proportioned to the special benefits he receives; he is thrown

[1] *Report of the Poor Law Commissioners on Local Taxation*, p. 65. The statement in the text is strictly true of the ordinary sewers rate. Yet in more recent years there is an occasional instance of a charge under special sewers acts, where we find not only a separate area for the property benefited, but where it is permissible to levy a charge on each separate piece of land according to the benefits specially derived. These isolated examples would indeed be precedents for "betterment taxation" or assessment according to special benefit. So the Metropolitan Sewers Act of 1848 gave the commissioners power to levy the charge on the various "lands or tenements in proportion to the several lengths of frontage abutting on such sewer as aforesaid or when all the lands or tenements specially benefited or drained by such works, or when in any other case an assessment according to frontage shall appear to the commissioner inequitable, then in such proportion as the commissioner shall determine, such lands or tenements to be benefited by such work." 11 and 12 Vict., chap. cxii., sec. 81. This is quoted in the *Orange Book of the London County Council.* But the compiler, Mr. Charles Harrison, does not always adequately distinguish between such cases and many of the other so-called precedents, where the matter of benefit is jurisdictional only. He may have been led astray by the *Report of the Select Committee of the House of Lords on Conservancy Boards*, 1877, no. 371, which accepted the statement of one of the witnesses of "the principle introduced by the statute of Henry VIII., and observed ever since, of taxing in proportion to the benefit conferred in each particular case." See *Report*, vi. The statute of Henry VIII., as we now know, spoke only of a jurisdictional benefit.

As to the later sewer acts, it has been repeatedly decided that "if property is situate within the area benefited by the sewers, it must contribute without any reference to the amount of benefit derived." See Reg. *vs.* Head, 3 B. & S. 419; 32 L. J. M. C. 115; 9 Jur. N. S. 871; 8 L. T. 708; 11 W. R. 339. *Cf.* Boyle and Davies, *The Principles of Rating practically considered*, 1890, p. 426.

[2] Lighting and Watching Act of 1833. See also 18 and 19 Vict., chap. 120, sec. 165.

into a general class with all others in the same category, and within this category every one pays according to his ability.[1] This statutory requirement, however, is not observed; and the lighting and watching rates, like all the other English local rates, are commonly levied in exactly the same manner as the poor rate — that is, according to the ability of the ratepayer.[2] The same thing may be said of the sanitary rates, which are legally chargeable on agricultural land, railways, *etc.*, at one-fourth only of the ratable value.

The English rates are thus nothing but taxes — special taxes, it is true, but levied according to the principle of all direct taxation, on faculty or ability to pay. Whether

[1] This is overlooked by Mr. Harrison in his collection of precedents in the *Orange Book.*

[2] "All these legal varieties are disregarded in practice," and the rates are made "on the same persons, on the same basis, and by the same scale as the poor's rate." *Report of the Poor Law Commissioners on Local Taxation*, pp. 65, 67. While this report is exceedingly valuable for its facts, it is sometimes confused in its economics. Thus we find the following passage: —

"For any system of taxation to be fair, it must bear a proportion both to the benefit conferred upon the taxpayers by the expenditure of the tax and to the means which the person possesses of paying the tax. It is, however, in all cases found to involve insuperable practical difficulties to combine both these conditions in the imposition of a tax, and it seems most usual to assume that the benefit derived is in proportion to the ability to pay, or that the ability to pay is in proportion to the benefit derived. *In most of the local taxes the ability to pay is the standard of taxation.* In some, however, where the taxpayer has a definable share of the benefit of the expenditure, the proportion of the benefit enjoyed is made the standard of taxation. In other cases both principles are attempted to be combined." p. 43.

As a matter of fact, the only examples of "benefit" adduced by the commission are the sewers rate and the lighting and watching rate. In the former the assessment by acreage is assumed by the commissioners to represent the principle of benefit; the assessment according to "profitableness," the principle of ability. This is a mistake, because, as we have seen, taxation of land by mere quantity was at one time everywhere the test of ability. In the lighting and watching rate "both principles," we are told, "are adopted, though very clumsily and inadequately." As has been explained, however, in the text, there is no question here of assessment according to special benefits to particular individuals. Thus the only examples adduced by the commission admit of a different interpretation, and the commission itself states "that the whole of our local taxation is imposed either by law, or by usages regardless of the law, on the same basis as the poor's rate."

the local expenditure is defrayed by one general tax, as in some countries, or by a number of special taxes, as in England, is immaterial — in each case we are dealing with a tax proper.[1]

But when we leave the principle of ability — as measured by property or by rental value or by any other test — and come to a payment which differs in each particular case, and which is proportioned to the special or exclusive benefit accruing to the particular individual, it is apparent that we are dealing with a very different kind of charge. Instead of the principle of faculty, we now have the principle of equivalents. The charge is not a rate or tax except in the wider sense that every compulsory charge levied by government may be called a tax, because it can be imposed only by virtue of the power of taxation. As we have seen above, however, the taxing power may manifest itself in different forms; a local rate is an example of one form, a highway toll or a cab license fee of another, a betterment charge of still another. Few Englishmen would say that a highway toll or a cab license is a rate or tax; yet a toll and a tax differ from each other scarcely more than do a local rate and a betterment charge. A local rate is levied for the purposes of the whole community or of a definite class of the community, according to the principle of capacity or ability to pay; a highway toll or a cab license fee or a betterment charge is imposed on particular persons for special benefits accruing to the individual, as distinct from all other individuals in the community.

Thus the problem is solved. A betterment charge (or special assessment) is at once a tax and not a tax. It is a tax in the sense that all compulsory charges are taxes,

[1] Professor Bastable, *Public Finance*, p. 364, thus errs in stating that the English local rates are "measured for each payer by the benefit of the service," and that "local taxation should be in proportion to advantage." In Rex *vs.* Mast, 6 T. R. 154, the principle of local taxation is laid down that "each inhabitant should contribute according to his ability, which is to be ascertained by his possessions in the parish." *Cf.* also Boyle and Davies, *op. cit.*, p. 99.

because they are imposed by the taxing power of government. But it is not a tax in the narrower and common sense of the term. It is not a tax in the sense that the income tax or the house duty is a tax; it is not a tax in the sense that a local rate is a tax; it is just as much or as little of a tax as a marriage license fee. If we persist in employing the term *tax* for all manifestations of the taxing power, it will be necessary to coin a new word for taxes in the narrower sense, as distinguished from fees and special assessments. It is the thing, not the name, that is important; and the confusion has arisen simply from the fact that we employ the same term, sometimes for the one conception, sometimes for the other. Much trouble would be avoided if the payment were called simply a betterment charge or a special assessment, as opposed to a local rate or tax.[1]

[1] The entire contention of Baumann, *Betterment, Worsement, Recoupment* (1894), p. 36, in opposition to Mr. Harrison's statement that betterment in the United States has been decided not to be taxation, rests on a failure to observe the distinction made in the text. "Special assessments" may indeed be "an exercise of the taxing power"; and yet "betterment" is not necessarily the same thing as "taxation." So also Mr. Baumann's criticism of Mr. Cripps' distinction (pp. 39–40) rests on a complete misconception.

This is a convenient place to call attention to the errors in Mr. Baumann's earlier book, *Betterment* (1893). He entirely misunderstands Judge Cooley in imagining that that author condemns the practice of estimating the benefits accruing to each lot separately. As Mr. Rosewater points out in the *Political Science Quarterly*, viii., p. 764, what Judge Cooley really disapproves, and what is now quite generally held to be unconstitutional, is the practice of charging upon the abutting owner the cost of the particular improvement in front of his lot only, without reference to the benefits along the whole line of the work — in fact, without apportionment. From this misconception, Mr. Baumann has fallen into grievous error. He also fails to distinguish the safeguards thrown about the exercise of eminent domain in the American commonwealths from the procedure required in levying special assessments. It is, in most cases, merely an accident that the proceedings for the two operations happen to be joined together.

There are many other mistakes in the volume, as, for instance, the statement that special assessments are unconstitutional in Minnesota (p. 75); that their constitutionality is still doubtful in Illinois (p. 76); that Adam Smith lays down value as the only standard by which taxes can be apportioned (p. 81); and

III. *The Principle.*

The theory of the betterment charge or assessment according to benefits is very simple. It rests upon the almost axiomatic principle that if the government by some positive action confers upon an individual a particular measurable advantage, it is only fair to the community that he should pay for it. The facts may be in question, for it may happen that the particular advantage is only ostensible, or that the special benefit is not measurable. But the facts being given, the principle seems self-evident.

In our discussion of the single tax, it was pointed out that there is a distinction between unearned increment in general and the betterment principle in particular. The single tax on land values was found to be inequitable because benefit is not the general principle of taxation, and because, even if it were, it would not mean a single tax. The benefits of general governmental action are quantitatively unmeasurable; we do not by paying taxes purchase a definite amount of advantages from the government as we buy a certain quantity of tea from the grocer. But if the government performs some special service for us, there is no reason why the public at large should pay for it: to the extent that the community as a whole is interested in the service, it is proper that it should contribute to the expense. If it is wholly a matter of common interest, the community should pay all; if it is wholly a matter of individual benefit, the individual should pay all; if it is partly common and partly individual, the cost should be divided and the individual should pay up to the amount of his measurable special benefit. In the one case, the expense is met by a tax or rate; in the second, by a fee or toll, or by a special assessment or betterment charge; in the third, by a combination of both methods. To object to a betterment

that American judges allow special assessments for benefit with reluctance (p. 100). On p. 80 we find the same confusion as that alluded to above in the later work. Most of the objections in this later book are too frivolous to deserve any reply.

charge because it is not levied according to the principle of ability to pay is as illogical as to object to a tax because it is not levied according to the special advantage derived. We must not apply to one principle of public contribution the test peculiar to another principle.

When, therefore, the local government performs a definite act and makes a definite expenditure the result of which is a clear and measurable accretion to the value of some particular piece of property, every consideration of logic and justice demands a special contribution by the owner to defray this expenditure.

As a principle, this is really no longer debatable. Even so conservative a body as the Committee of the English House of Lords, after hearing all the arguments in opposition, has recently come to the conclusion that—

> The principle of betterment—in other words, the principle that persons whose property has clearly been increased in market value by an improvement effected by local authorities should specially contribute to the cost of the improvement—is not in itself unjust, and such persons can equitably be required to do so.[1]

This concession practically marks the close of the contest on the question of principle, in England. The methods of carrying out the principle are indeed debatable; but in its broad lines, the theory is now accepted in the chief quarter where opposition could be expected.[2]

[1] *Report of the Select Committee on Town Improvements*, 1894, p. iii.

[2] The legislative history of betterment in England is interesting. The first bill was the Strand Improvement bill of 1890, in which the betterment provisions inserted by the London County Council, and adopted in the chairman's draft report, were struck out by the Select Committee of the House of Commons. The next was the Cromwell Road Bridge bill of 1892, in which the betterment clause was struck out by the committee by a majority of one. Then came the London Improvements bill of 1893, providing for a new central street from the Strand to Holborn. This passed the House of Commons but was defeated in the House of Lords' committee. Finally came the Tower Bridge Southern Approach bill of 1894, which after various mutations was approved by the House of Lords' committee, and became law in 1895, as 58 and 59 Vict., ch. cxxx. In this act the payment is termed an "improvement charge."

A subject much discussed in connection with betterment is that of "worsement." If an individual has to pay for a benefit, it was claimed that his neighbor should be recompensed for damages to his property, caused by a public improvement. The committee, however, decided that injury to property was to be taken into account only when a betterment charge was imposed upon the same owner for benefits accruing to his property in the immediate neighborhood, by the very same improvement. Further than this it was unwilling to go. As it has been well said, it is nothing less than a grotesque absurdity to suggest the creation of new vested interests in the perpetuation of such public evils as overcrowded and insanitary slums and in circuitous modes of communication.[1] In the Tower Bridge Act of 1895, as well as in the Standing Orders of the House of Lords adopted in July, 1895, the legitimacy of "worsement" has been recognized, but only within the above very narrow limits.

A plan sometimes urged as calculated to attain the same results as the betterment system is that of "recoupment." It has occurred that in making an improvement the municipal government or other public body has taken more land than was actually necessary, and after the execution of the work has sold the land at a higher price, thus retaining for the community the increment in value. It was shown by the testimony before the Lords' committee that, as a matter of fact, these transactions had generally resulted in loss rather than in gain; but it was claimed that this was due in large part to certain defects in the law. The committee reported itself "as not satisfied that it has ever been tried under circumstances calculated to make it successful."[2] In England there is perhaps no objection to trying this experiment on a larger scale; but in the democratic municipalities of America

[1] G. H. Blunden, *Local Taxation and Finance*, 1895, p. 95.

[2] "No sufficient power has ever yet been given to the local authorities to become possessed of the improved properties without buying out all the trade interests — a course which is inevitably attended with wasteful and extravagant expenditure." *Report*, no. 10 (of recommendations).

it is questionable whether good results could be expected from the scheme, even if — as seems uncertain — it were constitutionally valid.

It is evident, however, that the real difficulty with betterment lies in the details of its execution. In the United States, where the system has for a long time been thoroughly at home, it has been deemed sufficient to approximate roughly to the benefits conferred. In no department of public contribution is it ever possible to gauge with precision the exact relation of the individual to the public purse. With special assessments, as with other operations of public finance, the best that governments can do is to reach substantial justice. The decision is left to the legally constituted authorities, and the assumed benefit, which is to guide the authorities in their decision, is not always necessarily the exact actual benefit, a fair approximation to the real benefit being now considered adequate for practical purposes. This result, however, has been reached only after considerable experience.

In England, on the other hand, where the principle is about to be introduced, far more solicitude is shown, because the opposition of the vested interests is naturally stronger. The committee recommends certain rules, most of which have been incorporated into the Tower Bridge Act of 1895, which are intended to limit the charge to the amount of actual benefit, and to protect the owner against any possible abuse of the system. He must be notified not only of the proposed charge before the commencement of the projected improvement, but also of the alleged increase in the value of his property within some reasonable period after the completion of the work.[1] Furthermore, if the owner objects, the matter is to be decided by an arbitrator or a jury, the

[1] "The period should not be so short that the effect of the improvement could not be adequately tested, and it should not be so long as to make the property intended to be charged suffer in its market value by the suspension of the decision as to the charge." *Report*, no. 3. In the Act of 1895 the limits are twelve months and three years. 58 and 59 Vict., ch. cxxx. sec. 36 (4).

costs being borne in general by the local authority. Finally, if the owner still thinks that the charge exceeds the enhancement of value to his property, he may demand that the local authority purchase the property at its market value.[1]

These provisions are interesting, the last being almost identical with the provisions of the recent New Zealand law explained in another chapter. In New Zealand, it is applied to progressive taxation; in England, it is recommended for the betterment charge. In each case it is simply a protection of the individual against arbitrary administrative action. The other provision as to costs seems to be a little unfair to the government, as it puts a premium on litigation and is calculated to interfere with the prompt completion of the work. All these points are, however, matters of detail which can easily be adjusted.

The benefit principle, even though it is not applicable to taxation proper, has thus its undoubted place in the sphere of local revenue. That it is liable to abuse may be conceded;[2] but so is the principle of ability to pay. Taxes, like special assessments, have not always been levied with perfect fairness; but the departure from fairness must in these two cases be measured by entirely different standards. The system of special assessments, as has already been pointed out,[3] embodies the kernel of truth in the unearned increment doctrine. Dr. Rosewater puts the point admirably as follows:[4] —

> Special assessment undoubtedly transforms a certain part of the enhancement of land values from an unearned increment into an

[1] *Report*, no. 7. The clause as adopted in the Act of 1895, sec. 36 (9), provides that the option of selling must be exercised *before* the arbitration.

[2] For a history of these abuses, see Rosewater, *Special Assessments*, chap. iii.; also *ibid.*, pp. 142–144.

[3] George A. Black, *The History of the Municipal Ownership of Land on Manhattan Island*, p. 78. Columbia College Studies in History, Economics and Public Law, vol. i., no. 3.

[4] Rosewater, *Special Assessments*, p. 140. *Cf.* the articles on "The Betterment Tax," by the Duke of Argyll and by John Rae, in *Contemporary Review*, vols. lvii. and lviii.

earned increment. It does this at the very time that the benefit arises, thus avoiding every taint of confiscation of vested interests. Through it may be secured the chief advantages of the appropriation of the future unearned increment, without destroying the healthful stimulus arising from the private ownership of landed property. The total increase is seldom appropriated, but only so much as is required to defray that share of the cost of the particular improvement which may represent the special benefit conferred. We have here no uncharitable begrudging of all rise in value due to conditions other than those created by the party who reaps the advantage. All that is demanded is that when a person secures an enrichment to his estate, and the expense, if not borne by him, must be borne by some one, — in this instance, the tax-paying public — he shall make compensation therefor. This is the true equitable principle. The contributor pays not alone because he obtains a benefit, but because that benefit is joined to an expense the burden of which finds a fitter resting place upon his shoulders, than upon the shoulders of others not specially benefited.

In the United States the betterment principle has long been firmly rooted in the revenue system; and although there may be particular cases in which it has not worked well, the evidence of experience and the popular verdict as to the methods employed are overwhelmingly in its favor. On the continent of Europe the system is now fast spreading because of the growing importance of municipal finance and of the more careful analysis of its underlying principles. England, which has taken the lead in the reform of the national fiscal system, cannot afford much longer to lag behind in the movement for the just distribution of local burdens. Without the application of the betterment principle, such justice can scarcely be secured.

CHAPTER XII.

RECENT EUROPEAN LITERATURE IN TAXATION.

In some respects the most significant fact of the recent development of economic thought is its growing international character. Not only does the modern economist find it necessary to draw his facts from a wider field than that of his own country; but if he desires to keep abreast of the advances in theory he also finds it incumbent on him to read many languages and to note the movements in widely distant countries. In no domain is this more true than in the science of finance. In the following pages an attempt will be made to run hurriedly over the productions of the last decade and in a general way to outline their value to the English speaking student.

I. *Germany.*

There are two methods of writing economic works. One is essentially historical and descriptive, giving an account of the past and of the actual state of legislation and of methods, and attempting to draw therefrom a statement of the underlying principles; the other is primarily abstract and deductive, making little use of history and of facts, but endeavoring to reach conclusions from well-defined principles. The modern German writers on the science of finance have for some time devoted themselves almost exclusively to the first method; but very recently a partial revulsion of feeling has been indicated by the appearance of several works which attempt to avoid the exaggerations of the extreme historical school, and to take refuge once again in purely

theoretic discussion. For Germany, this is probably a salutary reaction, because of the comparative discredit into which pure theory had fallen.

The *Handbook of the Science of Finance* by Professor Umpfenbach[1] is, strictly speaking, not a new work. But as the first edition appeared about a quarter of a century ago, and as some notable additions have been made to the present volume, it may be discussed as practically a new publication. The first edition was published just before the current toward historical economics had set in strongly; the second edition appears just after the tide has begun to ebb. There are hence almost no vestiges of the inductive treatment. In fact, the strong points of the work are the rigor of the theoretic discussions and the precision of the definitions. The general tone of the book is conservative. The author opposes the further industrial activity of the state, even in such domains as that of railroads; he has nothing but ridicule for the idea of the income tax in practical life; he declares that the question of progression does not belong to the science of finance at all, because it involves communistic changes of property. These contentions are interesting as giving the work the characteristics of the French rather than of the modern German authorities. It is very doubtful, howhowever, whether they will exert any influence on German practice.

A more important point in Umpfenbach's book is methodology. The common division of public revenues by French writers like Leroy-Beaulieu is into domains, industrial undertakings and taxes, corresponding to Adam Smith's old division into revenue from public lands, from public stock and from taxes. The German writers, on the other hand, early saw this division to be inadequate and, as we know, added another category, fees. The exact definition of fees, however, has always been a mooted point; and few

[1] *Lehrbuch der Finanzwissenschaft.* Von Dr. Karl Umpfenbach, o. ö. Professor der Staatswissenschaften an der Universität Königsberg. Zweite Auflage. Stuttgart, Ferdinand Enke, 1887. — 8vo, xii., 517 pp.

writers agree exactly on the distinction between fees and taxes. Umpfenbach defines fees as "special payments for the cost of a financial transaction, in so far as it is necessary for political purposes, and in so far as the expenses surpass those which it would be permissible to lay on the community as such." Passing over the minor infelicities of expression, we may say that at all events it conveys a precise meaning.

Had Umpfenbach rested here, his book would have rendered a substantial service to the clearing up of ideas. But he adds to his three categories of fees, taxes and domains a fourth category of fiscal (or lucrative) prerogatives, which are defined as "compulsorily reserved, exclusive rights of the state over specified kinds of property rights." The foundation of this fourth category is to be found in the mediaeval *regalia;* but Umpfenbach makes it now include such widely diverse revenues as the poll tax, taxes on communication, on the transfer of property, on legacies and successions, revenue from treasure-trove, from mines, salt, tobacco, spirits and bank monopolies, and finally from licenses. He lays great emphasis on this division; in fact, it is the thread which runs through the whole work. But the only result of its adoption would be undue restriction of the field of taxation, and an increased confusion as to the exact nature of taxes. What he gains by the separation of fees from taxes, he loses by the separation of taxes from fiscal prerogatives. His methodological explanation will not, on the whole, commend itself to students of finance.

Much the same class of questions is treated by Professor Neumann in his work entitled *Taxation.*[1] Neumann is well known as one of the prominent modern writers on finance. His book on *Die progressive Einkommensteuer* remains one of the best works on that knotty subject; and in that, as in all

[1] *Die Steuer.* Erster Band. Die Steuer und das öffentliche Interesse. Eine Untersuchung über das Wesen der Steuer und die Gliederung der Staats- und Gemeinde-Einnahmen. Von Fr. J. Neumann. Leipzig, Duncker und Humblot, 1887. — Small 8vo, ix., 562 pp.

his earlier writings, is to be found a rich fund of historical and statistical information. In this newer work, however, Neumann has undertaken to analyse in detail the nature of taxation. The first volume, the only one that has yet appeared, is introductory and to a great extent methodological. The twelve chapters treat mainly of four topics: classification of public revenues, fees *versus* taxes, the principle of public interest, and direct *versus* indirect taxes. In the discussion of these points the author shows great acuteness and dialectic skill; yet three criticisms can be made. The discussion is too minute, and often borders on the wearisome; the style is anything but clear; and the conclusions are not advanced with the necessary precision.

After criticising the usual method of classification, Neumann defines fees as payments for special services of the state or the community, so far, but only so far, as the public interest is involved. This would include the tolls of roads, canals, railways and telegraphs, but would exclude the revenues from fiscal monopolies. He devotes over two hundred pages to the discussion of public interest, and finally defines it, but in so characteristic a manner that it must be given in the original:—

> Oeffentliches Interesse im (objectiven) engeren Sinne ist ein auf menschliche Handlungen oder Werke bezügliches Interesse von Zielen oder Zwecken so grosser Bedeutung, dass um ihretwillen eine Auferlegung von Opfern nach herrschender Annahme gerechtfertigt ist.

In other words, two hundred pages are devoted to proving that a "public interest is an interest of such importance as to justify a sacrifice on the part of the individual." This might surely have been shown in less than two hundred pages, and without the formidable array of proofs and counter-proofs, of exceptions and sub-exceptions, which fairly crowd the book and bewilder the reader. To be over-exact is often as great a mistake as to be superficial, for either excess is apt to result in confusion.

Much better is his discussion of the four methods of classifying direct and indirect taxes. Neumann finally allies himself to Parieu's method, making the distinction depend on the permanence or periodicity of the act. Other parts of the book also will prove suggestive, as, for instance, his discussion of the relation between taxes and prices; but it might well have been boiled down to one-fifth of its present compass. Questions of methodology are not the all-absorbing ones.

The same criticism can certainly not be urged in the case of the last volume of Wagner's *Science of Finance.*[1] The first volumes of this great work are familiar to all students. Wagner started out almost two decades ago with the idea of publishing a new edition of Rau's finance, but soon found his differences from Rau to be so great as to call for a new creation, instead of a new edition. The first two volumes of the work appeared years ago — the second in 1880. This third volume deals not with general theory, but with special questions in the history and practice of taxation. Unfortunately Wagner's plan was so comprehensive, and his method so productive of repetition, as to make the completion of the work doubtful. In fact, as it progressed, Wagner entered into continually greater details which would have been in place only in a cyclopædia. The consequence is that it has taken him ten years to write the third volume, and that he has been able to discuss the present condition of French and English taxation only. Wagner himself seems to have tired of this minute method and now intimates that he can scarcely foresee the time when the work will be finished. This is the more to be regretted because the systems of France and of England have already been made familiar to us by other good publications, while the condition of the re-

[1] *Finanzwissenschaft.* Von Adolf Wagner. Dritter Theil: *Specielle Steuerlehre.* — Uebersicht der Steuergeschichte wichtigerer Staaten und Zeitalter bis Ende des 18. Jahrhunderts. — Die Besteuerung des 19. Jahrhunderts. Einleitung: Britische und französische Besteuerung. Leipzig, Winter'sche Verlagshandlung, 1889. — 8vo, xxxi., 916 pp.

maining countries, which he has not yet fully treated, is far from being equally well known. It is to be hoped that the work will not be left a torso. The present volume requires no especial commentary beyond the statement that in all his details of the history and practice of taxation, as well as in his general summaries of the French and English systems, Wagner remains true to the ideas advanced in the former volumes. He has continually in mind the demands of what he calls the socio-political principles — the principles whereby the government is looked up to as the regulator of the distribution of wealth, and taxation is regarded as an engine to redress inequalities of fortune. Much as we may dissent from the fundamental points of Wagner's general position, it must be conceded that he has developed his doctrines with consummate keenness and phenomenal learning, and that his *Science of Finance*, even though incomplete, still stands at the head of financial literature for the suggestiveness of its views and the wealth of its contents.

Professor Cohn's *Science of Finance*[1] is constructed on an entirely different method. It forms the second volume of the general *System of Political Economy*, the opening volume of which was published several years before. After a general introduction on the nature and history of the science of finance, the first book treats of the essence of government economy or of the public household, dealing with public functions, public expenditures, the history and development of public revenue, and the budget. The second book discusses the principles, history and actual systems of taxation. The third book is devoted to a presentation of German taxation. Finally, a fourth book treats of public credit.

The chief interest of the work lies in the first book and in the first chapter of the second book. The remainder of the

[1] *System der Finanzwissenschaft. Ein Lesebuch für Studierende.* Von Gustav Cohn, ord. Prof. der Staatswissenschaften an der Universität Göttingen. Stuttgart, Ferdinand Enke, 1889. — 8vo, x., 804 pp.

The Science of Finance. By Gustav Cohn. Translated by T. B. Veblen. Chicago, 1895. — 8vo, xi., 800 pp.

volume is always interesting, as are all of Cohn's writings, but it contains nothing that can be called a real contribution to financial science. He is indeed, through his intimate acquaintance with Swiss financial methods, often enabled to illustrate certain principles more successfully than any of his predecessors, but in the main he follows the rather conservative lines of accepted views. The book on German taxation gives an excellent picture of the present situation, but is omitted in the translation. The chapters on public credit contain an admirable historical survey, but in matter of principle do not afford anything which cannot be found at least equally well said in Professor Adams' work.

It is otherwise with the discussion of the general principles of finance; for Cohn's treatment of the various kinds of public contributions marks a distinct advance. His classification of public revenues, although not completely satisfactory, is based upon an analysis of comparative private and public benefits, and is elucidated by some suggestive remarks. His description of the historical development of public economy is clearer than that of Roscher, and traces the chief lines of development with a master-hand. His short discussion of the principles of local finance is especially welcome when compared to the laborious and confused chapters to be found in other treatises.

Most striking is his treatment of the equities of taxation. Cohn shows that just as the accepted ideas of justice are a product of historical evolution, so the conception of just taxation has assumed a different form in every stage of human progress. He gives a sketch of the different ideas that swayed the public mind at various epochs, and then devotes himself in particular to a consideration of progressive taxation. The result of the discussion is the adoption of the principle of progression, not for Wagner's socio-political reasons, but simply because under modern conditions proportional taxation no longer corresponds to taxable capacity. Cohn seeks to define and to limit the principles of progression, and in connection with this

gives a good history of the doctrine of the "minimum of subsistence."

Weak points are not lacking, as, for instance, in his discussion of the incidence of taxation. Here, as in many other places, Cohn conceals the difficulties of the problem by the brilliancy of his style. As this brilliancy is entirely absent in the translation, the work will probably not receive so favorable a reception in its English dress as it did in the original. It will have served our purpose, however, to call attention to the points in which Cohn's book marks an advance on its predecessors. Wagner, Roscher and Cohn supplement one another. Wagner is more radical and audacious in his suggestions and illustrates his theories by a wealth of statistical material; Roscher is weak in theory but strong in history; Cohn seeks to keep the golden mean. Cohn's *Finance* is superior to all others in two respects, — in clearness of style and in philosophic breadth of view. We welcome this new accession to economic literature as one of the most important works of the decade, but very much fear that it will help the American student to only a slight extent.

The most recent text-book is by Dr. Vocke. As this is, however, in some respects simply the elaboration of an earlier work, we shall devote a few words to its predecessor. In this former work, entitled *Contributions, Imposts and Taxes*,[1] Dr. Vocke treats the subject in a somewhat peculiar way. After having won his spurs over a quarter of a century ago by his *History of English Taxation*, at that time the most meritorious work on the topic, the venerable doctor here attempts to find the moral basis and relative justification of the various taxes. The problem which he sets out to solve is that of the exact difference between direct and indirect taxation; and the conclusion to which he comes is at all events novel. In an introductory book he traces the

[1] *Die Abgaben, Auflagen und die Steuer, vom Standpunkte der Geschichte und der Sittlichkeit.* Von Dr. Wilhelm Vocke, geheimer Oberrechnungsrat. Stuttgart, J. G. Cotta, 1887. — Large 8vo, xxvi., 625 pp.

literary doctrine of the basis of taxation in general, and divides the authors into three schools: the representatives of the contract or protection doctrine, including most of the earlier English and French works; the group which emphasizes the sovereign nature of the state and the duties of the subject, but without any deeper historical insight; and finally the socio-political writers who, like Held, Schäffle and Wagner, attribute to the state a compensatory duty in taxing away inequalities of fortune. Vocke strongly objects to the latter as involving a dangerous socialistic tendency, and asserts that such considerations do not at all appertain to the science of finance. Neither in these schools, however, nor in the works of the "independent" writers, like Neumann, Stein and Roscher, does he find an answer to the great question: What is the ethical basis of direct, as compared with indirect, taxation?

An answer, he thinks, is possible only through a study of historical development. With characteristic German thoroughness, but with what seems unnecessary detail, Vocke begins with a psychological analysis of the individual and traces the evolution of his economic condition and qualities through the family and tribe to the state. In the patriarchal stage, as in the family, the contributions of the individual to the support of the whole are compulsory, universal and proportional to property. In the feudal state the contributions of the vassal take the shape of personal services and of payments in kind, afterwards converted into money payments. Then begin the customs and duties, the fees and tolls, the excises or evil duties (*mala tolta*), all of which rest primarily upon power — upon the imperious necessities of the overlord. The legal basis is the princely prerogative, the *imperium;* in other words, naked force. Quite different from these veritable impositions are the taxes proper. Beginning as the *trinoda necessitas*, aids and contributions, they soon develop into poll, property, and finally into profit taxes. These taxes, properly so called, rest on voluntary contributions, not on mere force; they are universal, not special; their

standard is personal ability, not mere expediency. In the tax there is a moral quality, in the customs and excises there is none.

This is the keynote of Vocke's book. The tax proper in its historical genesis is the direct tax, and connotes certain ethical ideas; the indirect taxes are properly not taxes at all, but imposts, and carry with them no moral implication. He makes a careful study of the development of indirect taxation in the next political form — the absolute monarchy; and he shows how and why the basis of direct taxation was changed from property to product. The remaining two-thirds of the work are devoted to a consideration of taxation in the actual or constitutional state. He concludes that the correct point of view has been won, and that future reform must proceed in the path of elaborating the direct taxes and of curtailing the indirect taxes.

Vocke's book may be termed a study in the philosophy of taxation. It contains no figures, and but few facts. The author's contention as to indirect taxation may be met by the reflection that justice cannot be the sole maxim of taxation; for the chief practical consideration is to balance the budget, and some taxes which are technically just may be practically unremunerative and therefore unserviceable. Moreover, Vocke fails to perceive that there are various kinds of indirect taxes, and that many of the imperfections of the older systems are removable. Yet, on the whole, he will serve as a useful antidote to such flimsy thinkers as McCulloch, who exerted so considerable an influence on English views on taxation.

In his new book entitled *The Elements of the Science of Finance*,[1] which constitutes the second volume of Frankenstein's *Hand- und Lehrbuch der Staatswissenschaften*, Dr. Vocke devotes himself to the discussion of general principles. It is a relief, after the huge and many-volumed German works on the subject, to find the science here treated as a whole and in so compact a form. In other respects, also, Dr. Vocke's work

[1] *Die Grundzüge der Finanzwissenschaft.* Von Dr. Wilhelm Vocke. Leipzig, C. L. Hirschfeld, 1894. — xii., 446 pp.

differs from most of its German predecessors. It contains almost no references to literature and it is written in a style calculated to interest the average layman. But to those acquainted with the work just discussed, the present volume will not bring much that is new.

Here, as before, he looks upon financial history simply as the medium of bringing out more and more clearly with every generation the idea of faculty. Here, as before, he confines the term *tax* to direct taxation and eliminates from the whole field of compulsory revenue the so-called *Verbrauchsauflagen*, or indirect taxes on consumption. His whole classification of revenues is very confusing. On the one hand he puts the private economic revenues, by which he understands those from the public domain and from the prerogatives as well as from industrial undertakings; on the other hand he puts the compulsory revenues, divided into fees, payments for transactions (*Verkehrsabgaben*) and taxes. Between these he puts another category, the so-called "mixed" revenues, which he again divides oddly enough into economic monopolies, fiscal monopolies and imposts (*Verbrauchsauflagen*). It will be seen how unmodern this is, and how little Dr. Vocke has profited by recent discussion both at home and abroad.

At the same time, in his treatment of taxation we find many good points, such as his examination of the place where a tax ought to be paid, involving some of the difficult questions of double taxation. A valuable feature of the book is the discussion of the norm of taxation and the measure of faculty, in which he treats successively of property, product and income. Undue stress seems to be laid on the second of these, although the author cleverly exposes some of the exaggerations of his predecessors. Most of the book is of interest chiefly to Germans; but as there are certain broad traits of industrial development common to all countries, students of American and English finance will find in Dr. Vocke's volume many hints which can be fruitfully applied to conditions at home. The bibliography, especially as

regards foreign literature, is weak. The book can, nevertheless, be recommended, with important reservations, to advanced students.

II. *France.*

After the volume of McCulloch, published in 1853, no English work on the principles of taxation appeared for forty years. English and American readers were compelled to depend on German and French treatises; and, from greater familiarity with the language, more commonly on the latter. But since it has been an unfortunate habit of many French writers on finance to discuss their topics in happy disregard of the newest thought in other countries, it follows that even their most approved works on taxation give the reader only the French view, not the wider scientific or comparative view. This reproach to French literature has now been removed by the admirable work of Professor Denis, who is, however, not a Frenchman, but a Belgian.

Professor Denis made his reputation as an authority on finance some years ago with the valuable report to the city council of Brussels on the income tax, afterwards reprinted as a bulky volume. Since that time he has been giving courses of lectures on finance, which were subsequently published in book form under the general title *Taxation.*[1] The present volume gives the ground covered in 1886–87; a succeeding volume will continue the subject so as to include the whole field of taxation.

The fact that these are published lectures contributes to the value, as well as somewhat to the shortcomings, of the book. The style is simple and clear, and the arrangement is logical and sharply defined; but on the other hand the lecture form has made it impracticable to give authorities for the facts and opinions quoted, except by a short bibli-

[1] *L'Impôt.* Leçons données aux cours publics de la ville de Bruxelles. Par H. Denis, Professeur à l'Université. Première Série. Bruxelles, Veuve Monnom, 1889. — 8vo, xiii., 309 pp. — [Accompagné d'un] *Atlas de Statistique comparée.* — Large folio, 25 plates.

ography at the close of each chapter. Furthermore, the details of the argument have not been pursued with such care as would be demanded in a work constructed on other principles. Many of the finer points, including some that are of permanent practical importance in other countries, receive no attention at all. The history and facts of taxation, again, are given only in a very fragmentary way. With all these qualifications, however, the book of M. Denis, so far as we can judge from the present instalment, may be regarded as one of the most valuable works on taxation hitherto published. Its chief claim to recognition is not so much the views of the author, as the calm and unbiassed consideration of the doctrines of all his predecessors. The fundamental vice of many writers is the assumption that the views expressed by them are new; for ignorance of economic and financial literature is scarcely less common than ignorance of economic and financial facts.

Professor Denis, considering the science of finance as a subordinate division of sociology, and as distinct from political economy although having many points in connection with it, attempts to lay down the laws of the relations of these sciences. The greater part of the book is devoted to a discussion of the problems of justice, and to a consideration of the various direct taxes. On many of the important questions, such as progression, minimum of subsistence, incidence, the basis of taxation, *etc.*, readers who have been confined to French and to older English works will find a wealth of new ideas and a mass of interesting facts. Of course no work written by a European, or at all events by a continental, scholar can be expected to treat primarily of those questions which most interest and affect Americans; but if there is any science at all in finance, such works as this must be deemed of the greatest importance to Americans and Europeans alike. Some minor mistakes might be noted; as the statement that the idea of the differentiation of the income tax is to be ascribed to a German source. In reality the theory can be dated back to the beginning of the cen-

tury in England, and it has been fully discussed in parliamentary reports and in scientific essays for many decades. But such smaller points must be overlooked in a consideration of the general tone and value of the book. The usefulness of the work is greatly increased by the accompanying volume of graphic tables, which give in small compass what would require many words to explain.

France has of late been devoting more attention to practice than to theory. Since the standard work of Leroy-Beaulieu, published almost two decades ago, there are very few books to be mentioned of wider scientific interest, if we except the brilliant little sketch by Léon Say published during the eighties. But France also has had her practical difficulties to meet, and it is to these practical questions that most of the recent writers have addressed themselves.

In France the discontent is of long standing. Almost every author for the last twenty years has been calling attention to the lack of system and to the glaring inequalities in the present practice of taxation. Ever since the war of 1870 repeated efforts have been made to supplement the direct taxes and to rid the country of some of the burdensome indirect taxes by the creation of an income tax; and the advantages of such a policy had been hotly discussed by both sides. In 1887 the strife was renewed owing to the proposition of Dr. Koenig, whose *mémoire* on *A New Income Tax*[1] was considered so important that the project recommended in its pages was adopted by M. Dauphin, then minister of finance, and was introduced as a government measure.

Dr. Koenig holds that the imposition of an income tax assessed on the declared income of individuals is practically impossible in France. He finds that the experience of England and Germany all point to the same result — evasion has become a system, deceit the rule. A far better method appears to him to be to calculate the income by some outward

[1] *Un nouvel Impôt sur le Revenu.* Mémoire qui a inspiré le Projet du Gouvernement relatif à la Réforme de la Contribution personnelle mobilière. Par Dr. Gustave Koenig. Paris, Guillaumin, 1887. — 12mo, lxiii., 195 pp.

sign, such as the house rent. The *contribution personnelle et mobilière* is already based on this principle which Dr. Koenig proposes to develop. It is a well-known fact that the lower we go in the social scale the higher is the proportion that house rent bears to total expenses or to income. Rent is an increasing element of expense in proportion as expenses decrease; the poor spend relatively far more than the rich. Dr. Koenig suggests a progressive rate of taxation assessed on the house rent, maintaining that this progressive rate will counterbalance the decreasing proportion that rent bears to expense. The plan is skilfully worked out; but, in common with all plans of taxing expense, it has one defect. What a man spends is no sure criterion of his income, or of his ability; and the higher you go, the more uncertain does the criterion become. The objection to the prevalent French system is that the wealthy escape their share of taxation; but a tax on expense, even at a progressive rate, while undoubtedly a step in advance, would not completely remove the objection. Dr. Koenig's plan has indeed the merit of doing away with all inquisitorial difficulties and of attaching itself to existing conditions; but it is at best a half-hearted measure, a mere temporizing expedient to be thrown as a sop to the radicals. It did not satisfy them, and the bill was finally killed in the legislature. The work is, nevertheless, interesting and contains much valuable information. The allusions to America are not always felicitous.

M. Guyot, in his work on *The Income Tax*,[1] sets himself a different task. The critics of the French system of taxation have always contended that personal property is unduly exempted. M. Guyot was requested by official authority to investigate their propositions for an income or for a general property tax; and his book furnishes a noteworthy addition to the studies previously made by Menier, Denis and Chailley. The report is one of description rather than of analysis, and

[1] *L'Impôt sur le Revenu: Rapport fait au nom de la Commission du Budget.* Par Yves Guyot. Paris, Guillaumin et Cie, 1887. — 12mo, xii., 347 pp.

the various parts are of quite unequal value. The account of the English income tax is neither detailed nor satisfactory. Attention, however, is called to the familiar fact that the English system is not a tax on general income, but on product, and that with the exception of schedule D (income from commercial pursuits, *etc.*) it may well be compared with the *contribution foncière* and the *contribution personnelle et mobilière* of France. The description of American taxation is absurdly inadequate, and that of the German system is not much better. On the other hand, the working of the Italian law of 1877 taxing the income of movable property is fully explained; and a good chapter is devoted to the income and property taxes of the Swiss cantons.

M. Guyot is not a partisan of the income tax; he advances the common argument of the inquisitorial character of the tax, and discusses rather superficially the question of progression. The history of the various projects from 1848 onward is, however, well written and interesting. He thinks that France committed a grave mistake after the Prussian war in increasing the indirect taxes. He leans toward a general property tax, like that advocated by Menier; and in discussing the objection that the valuation is attended with great difficulties, he says: "La pratique des États-Unis et de la Suisse répond encore à cette objection." It is to be feared that this rosy view is caused by entire ignorance of American methods and results. His error shows the extreme danger of general analogies, and tends to make one sceptical as to M. Guyot's other propositions.

The practical outcome of the report is a proposal to reform the property taxes. The land tax, as imposed in 1790, is an apportioned tax. As a consequence, as early as 1821 the division between the departments and the communes was so unequal that in some cases the tax amounted to one-sixth, in others to only one-seventeenth, of the rent or produce. A general valuation or *cadastre* was begun in 1808 but was not finished until 1851; and in the meantime the valuation has again greatly changed, so that at present the amount of tax paid

varies from one to twenty per cent of the rent. As an escape from this crying inequality, Guyot demands its conversion into a percentage tax, in order that each plot may bear its proportionate burden. He would, moreover, have the tax levied on capital value, rather than on rent or annual value. A similar reform is suggested for the tax on personal property (*la contribution personnelle et mobilière*), which since 1832 has been apportioned. These changes, together with an abolition of the duties on the transfer of land, amounting at present to ten per cent of the value, would in his opinion result in a far more equable and remunerative fiscal system, and would serve as an introduction to still greater and more important reforms. The student of comparative taxation will find in the volume many useful hints.

In a widely read work on *Financial Reform*[1] another remedy is proposed. The title is somewhat misleading, as M. Raynaud is the member of the society for financial reform who offered the prize, while M. Lorrain is the author of the essay which took the prize. M. Lorrain's plan, based on taxation of expense, is very simple. He would have the government abolish all existing taxes except the import and succession duties. In their stead the government would defray all its expenses through the issue of circulating notes payable in three years. These notes (*bons du trésor*) while outstanding, would be subjected to a tax of ten centimes per day for every hundred francs, the tax being paid by the holder, who affixes stamps for the requisite amount to the notes. The idea is that the notes are to form the sole circulating medium (with the exception noted below); and that, since every one must use them, every one will pay a tax in proportion to his expense. To provide for the exigencies of trade, all checks, drafts, bills of exchange, *etc.*, are

[1] *Les Réformes Fiscales.* Revolution Pacifique par l'Impôt sur les Revenus. Système de M. Jacques Lorrain, premier lauréat, *etc.* Par A. Raynaud, avec une preface d'Augustin Gallopin. Paris, Guillaumin, 1888.—viii., 195 pp.

subjected to a like tax. No note is to be issued under one hundred francs, so that the poor, who will continue to use small silver change, will be practically exempt. The sale of the stamps will defray all public expenses.

Were it not that this fantastic idea received the prize of two thousand francs, and that the society for financial reform circulated it extensively, it would not deserve notice here. Its absurdity is apparent. As a currency scheme it approaches dangerously near to the fiat-money craze; for the government will have no check on its extravagance, and the notes, like the assignats of old, must inevitably depreciate. As a tax scheme it is flagrantly inequitable, for the tax will be paid, not by the consumer, as is claimed, but by the debtor, whether he be producer or consumer. Even if paid by the consumer, it would be, like most taxes on consumption, regressive, or as the French say, *progressif à rebours*. Finally, it would fall harder on the working classes than on all others, because it would bring about compulsory purchases of commodities in order to get rid of the notes as soon as possible. To call such a tax *l'impôt sur les revenus* is a crass misnomer.

It would, however, lead us too far afield to pursue the study of practical tax reform in France. What primarily interests us here is the general scientific work in taxation; and with two exceptions the recent years have little to show. The book of Professor Worms, on *The Science of Finance*,[1] is a smoothly written discussion of some general questions. The author displays familiarity with the older German literature; but, as he himself states, desires to give only an elementary account of some of the fundamental problems. He is on the whole very fair; but the book is not clear-cut, and is not apt to exert a considerable influence outside of France. A distinctly abler work is that of Professor Stourm.

M. Stourm has long been favorably known as the author

[1] *Doctrine, Histoire, Pratique et Réforme Financière ou Exposé élémentaire et critique de la Science des Finances.* Par Emile Worms, Professeur à la Faculté de Rennes. Paris, A. Giard, 1891. — 8vo, 401 pp.

of an excellent book on the *Budget*, as well as of the classic study on the *Finances of the Old Régime and the Revolution*. It was natural, therefore, to expect that his new book on *General Systems of Taxation*[1] would be an important contribution to science. As a matter of fact, the work proves to be in some respects disappointing.

As in all the writings of M. Stourm, the reader will indeed find a simplicity and clearness that leave nothing to be desired. But some readers will question whether the simplicity is not in this case, at least, to some extent purchased at the cost of thoroughness. To the student who knows anything of the complexities of many of the problems, the *sang-froid* with which whole classes of arguments are either absolutely ignored or coolly brushed aside is surprising. M. Stourm is a conservative; but that he should treat the arguments of his opponents so cavalierly is disheartening. The book has many admirable points; it brings clearly before us the real problems of French taxation, it abounds in felicitous illustrations, and it has some excellent criticism of certain French projects. Its chief defect is its insularity. Although it abounds in references to French works, only a single foreign author on finance is mentioned later than John Stuart Mill, and that one, an American, in a wrong connection and with a mutilated title. Not a word is said about the contributions to theory made by the Germans, the Italians, the Dutch and others, during the past ten or twenty years. Even as to the practical discussions, we find with a few exceptions little that has not already been said, although perhaps not with the same grace and skill, in other works. It may be alleged in extenuation that the book was meant to explain the French system of taxation; but there is nothing in the title to suggest this, and even in a discussion of the French system more regard should have been paid to general theory. The book also contains some errors of fact. The system of direct taxation in America is mentioned as a

[1] *Systèmes Généraux d'Impôts.* Par René Stourm, Ancien Inspecteur des Finances. Paris, Guillaumin et Cie, 1893.—415 pp.

warning example of the "mixed system," or combination of the income tax with the property tax; while the general property tax, or "*impôt sur le capital*" is said never to have existed alone anywhere.

The work is in a measure redeemed by a vivacity of treatment and a charm of style, unusual even among Frenchmen. Were it as erudite and profound as it is attractive, it would rank with the most remarkable books of the decade.

III. *Italy, Holland and Spain.*

In some respects the best work on certain lines of public finance has recently been done by the two nations with whose literature we are less familiar, — the Italian and the Dutch It is worth while to call attention to a few of their late books on general theory.

The Italians have always been remarkable for the avidity with which they have seized upon and attempted to assimilate foreign theories; and so it is with the application of the more recent doctrines of value to fiscal problems. Professor Ricca-Salerno's *Science of Finance*[1] is only a compendium, but it is noteworthy for its clear and succinct discussion of fundamental problems. It deals very little with facts, and never with details, but attempts to lay down guiding principles. It is in many respects more difficult to write a small work than a large one, and Ricca-Salerno might easily, had he so chosen, have expanded his volume; for his previous elaborate works on the *History of Fiscal Doctrines in Italy* and the *Theory of Public Debts* show that he is fully acquainted with all the literature of the subject. In this little work he discusses first what he considers to be the three principal doctrines of public finance, — the theories of consumption, exchange and production. Many of his observations are acute, but his criticisms as well as his conclusions are based chiefly on those of Sax. He

[1] *Scienza delle Finanze.* Di Giuseppe Ricca-Salerno. Florence, J. Barbera, 1888. — 12mo, 263 pp.

treats of the doctrines of benefit and of faculty in matters of public revenue; but like most of the continental writers he distinguishes only between fees and taxes. Ricca-Salerno's attempt always to find the golden mean sometimes brings him into difficulties, as in the case of progressive taxation, which he says is not at all a matter of theory, but of practice. The doctrine of incidence is passed over a little too summarily, but the results of recent studies are shown in the application of the final-utility theory to fiscal problems. On the whole the little work is important, not only because of these newer views, but also on account of the eminently lucid presentation, in small compass, of the basic doctrines.

Not only Ricca-Salerno but other writers, young and old, have started out in their discussion from a consideration of the more recent theories of value. Professor Viti de Marco, in his *Theoretical Character of Financial Economy*,[1] endeavors to point out the resemblances and the differences between finance and economics, criticising the prevalent distinction between science and art, and pointing out the real nature of natural law in finance. In a more acute work on *The Scientific Data of Public Finance*[2] Mazzola attempts to state the general characteristics of finance as a social phenomenon. He not only deals with questions of method, but devotes himself especially to the economic basis of taxation, taking issue in several points with Sax. His work, full of dialectic and of keen reasoning, is only for the most advanced student. It is, however, questionable whether any attempt to explain taxation solely as a form of value can ever succeed.

Professor Zorli goes a step further. Starting out with two works on *Fiscal Systems*[3] and on the *Italian Law of Tax-*

[1] *Il Carattere Teoretico dell' Economia Finanziaria.* Di A. de Viti de Marco. Roma, Pasqualucci, 1888. — 8vo, 163 pp.

[2] *I Dati Scientifici della Finanza Pubblica.* Di Ugo Mazzola. Roma, Loescher, 1890. — 8vo, 216 pp.

[3] *Sistemi Finanziari.* Di Alberto Zorli. Bologna, Zanichelli, 1885. — 8vo.

ation,[1] he soon found it necessary to get a theoretical basis for his conclusions. This he sought in his *Science of Taxation.*[2] He tells us that neither the "concrete-abstract" method nor the historical method alone can solve the problems. For the science of taxation he claims a complete autonomy as the most important part of finance, but would include thereunder also the subject of fees. His classification of public revenues, incidentally remarked, displays some acute criticism of his German and Austrian predecessors, but is not wholly satisfactory. In the chapter on the causes of taxation, Zorli discusses at some length the views of Sax, and while conceding that subjective value and final utility play a considerable rôle in the interpretation of actual tax systems, he points out that they do not form the sole or even the most important explanation. The final chapter on the effects of taxation is based largely on the work of Cournot. In a still later book, entitled the *Psychological Theory of Public Finance,*[3] he develops his own ideas a little more fully. His contention is that just as value and utility depend upon certain psychological processes, so taxation which deals with public value must be studied from the same point of view. In his chapter on the psychological basis, he discusses the Austrian school; in the succeeding chapter on the relations of political and economic sentiment to public finance, he develops the suggestive idea of Loria. But his whole treatment remains, so to say, up in the clouds; and it is often difficult to see the application to practical problems. Finally, Professor Conigliani, in his *General Theory of the Effects of Taxation,*[4] gives a very abstract discussion of taxation re-

[1] *Il Diritto Tributario Italiano.* Di Alberto Zorli. Bologna, Tip. Compositori, 1887. — 8vo.

[2] *La Scienza dei Tributi in rapporto alle Recenti Teorie Economiche.* Di Alberto Zorli. Bologna, Fava e Garagnani, 1890. — 8vo, 119 pp.

[3] *Teoria Psicologica della Finanza Pubblica.* Di Alberto Zorli. Bologna, 1890. — 8vo, 77 pp.

[4] *Teoria Generale degli Effetti Economici delle Imposte.* Saggio di Economia Pura. Del Dottor Carlo A. Conigliani. Milano, Hoepli, 1890. — 8vo, 281 pp.

garded simply as an addition to the cost of production. He deals with the most fundamental problems; but the effort is a little too much for him, and the treatment of so far-reaching a set of questions is far from satisfactory. All these Italian works, however, show the undoubted impulse given by the modern doctrines of value and utility to the investigation of fiscal theory.

Somewhat similar is the impression made by the recent Dutch works. The writers of Holland are not so well known as they deserve to be. The contest between the schools, that has agitated Germany and Italy and has spread to England and America, has never affected Holland. The Dutch writers have pursued in harmony the even tenor of their way, accepting what was best in both schools, and developing on independent lines. This harmony is in great part due to the leader of the Dutch economists, N. G. Pierson, who from the very outset, two decades ago, accepted Jevons' theories. In fact, the final-utility theory of value had been accepted and developed in many of its applications in Holland years before the so-called Austrian school made itself talked of. On the other hand, Holland has not been lacking in those who have devoted themselves especially to the historical and statistical side of economics, without thinking, however, that they possessed all the truth. The science of finance was treated at a somewhat later stage of Dutch development, but with equal success.

One of the most recent treatises is Cort van der Linden's *Text-book of Finance*,[1] which deals in this volume only with taxation. After a general discussion of the nature and importance of public revenues, the author treats of the three divisions of taxation, as based respectively on the legal, the economic and the fiscal principles. The legal principles are those of equality, of what he calls social policy, and of universality. The economic principles deal with the pres-

[1] *Leerboek der Financiën.* De Theorie der Belastingen. Door P. W. A. Cort van der Linden. Hoogleeraar aan de Faculteit der Rechtsgeleerdheid de Groningen. The Hague, Gebr. Belinfante, 1887. —8vo, 608 pp.

sure and the shifting of taxation. The fiscal principles are those of adequacy, fixity, elasticity, and innocuity or the least possible detriment to production and exchange. This division is perhaps not unexceptionable. An important part of the work is devoted to the administrative side of public finance, such as the methods of payment, of control, of remedies and of penalties. This includes both an historical and a comparative discussion, and attempts to draw some general conclusions. The author divides taxes into those on product (*ontvangstbelastingen*), on expense, on exchange and on income; and he compares the systems in England, Germany, France and Holland. While not making any noteworthy contribution to theory, van der Linden's work is welcome as extending our material for a comparative science of finance.

A more important treatise is Pierson's *Handbook of Political Economy*,[1] of which the first part was published in 1884. Over half of the present volume is concerned with public finance; although many of the problems had several years ago been dealt with by him in his *Grondbeginselen der Staathuishoudkunde*. Pierson's treatment is characterized by broad touches. He is thoroughly at home in all the recent continental, English and even American literature, and tries to get to the bottom of many difficult problems. He is one of the first to attempt a comprehensive theory of incidence combining Schäffle's amortization theory with some more eclectic views. He sharply criticises Mill's treatment of the principle of equality of sacrifice, and constructs his whole theory on the principle of faculty. Everywhere the subject is treated with a master-hand. It is a work not so much for the beginner, as for the advanced student who desires to analyze more carefully the leading theories of modern public finance. Among the discussions to which he devotes special attention is that of progressive taxation, in the course of which he criticises the views of the other Dutch writers, which have been treated in detail

[1] *Leerboek der Staathuishoudkunde.* Door N. G. Pierson. Tweede Deel. Haarlem, De Erven F. Bohn, 1890.—8vo, xix., 627 pp.

elsewhere,[1] and whose influence is seen in the recent reforms of Dutch taxation described in another chapter of the present work.[2]

To mention only the Italian and the Dutch works would by no means exhaust the literature of value to the economist among the less well-known continental nations. Even in the Iberian Peninsula there are signs of renewed scientific activity.

The Portuguese work of Pereira Jardim on the *Science of Finance*[3] interests us more from the standpoint of fiscal practice than of fiscal theory. Not that theoretic discussions are absent from his book or without ability ; but as the work is posthumous, based on lectures delivered several years ago, the field of discussion does not include the newer theories of the last decade or two. Leroy-Beaulieu and Parieu among the French, Rau and Jakob among the Germans are the latest foreign authors discussed. Pereira Jardim does not really add anything to theory; but the history and description of Portuguese public finance, and the continual references to the inter-relations between Portuguese law and economics will be welcome to the student of comparative finance.

On the other hand, the two-volume work of Professor Piernas-Hurtado of Madrid, entitled *Treatise on the Public Economy*,[4] is interesting in many ways. Like the Italians and the Dutch, the Spanish writers have profited by recent foreign investigation, and treat many of the problems from the newer point of view. Piernas-Hurtado, while quoting liberally from Wagner and the other Germans, does not fear to take issue with them occasionally and preserves his own

[1] *Cf.* my work on *Progressive Taxation*, pp. 140–145, 182–189.

[2] *Supra*, pp. 322–330.

[3] *Principios de Finanças*, gusendo as Prelecções feitas pelo lente da Faculdade de Direito. Antonio dos Sanctos Pereira Jardim. Quarta edição. Coimbra, Imprensa da Universidade, 1891. — 8vo, 395 pp.

[4] *Tratado de Hacienda Publica y Examen de la Española*. Por José M. Piernas-Hurtado. Cuarta edición. Madrid, Ginés Hernández, 1891. — 8vo, 540, 677 pp.

individuality. This we notice not alone in questions of theory, but in problems of practical politics.

The introductory chapter, on the history of the science, is valuable as calling attention to numerous Spanish writers, not alone of the seventeenth century when Spanish literature was still almost at the flood, but also of more recent times. The author points out the causes of the essentially individualistic trend of the nineteenth-century Spaniards, and the socialistic reaction of more recent years. The general features of the development are the same in Spain as in almost all the other European countries. Like some of his German models, Piernas-Hurtado devotes a number of chapters to the conception of the state, to economic life in general, and to the economics of the state in particular. He looks on public expenses as public consumption, but gives us here almost nothing but platitudes. When we come to public revenues, however, it is different. He classifies these according as they arise from gifts, fiscal domains, public works, fiscal monopolies, taxes, eminent domain, fines or escheats; and devotes several chapters to each of the important classes. The most noteworthy point in his treatment of taxes is his view as to the basis of taxation. He discusses in turn expense, income and property, as bases, and finds each of them essentially defective. The really equitable basis of taxation he finds to be faculty, or the economic position of the individual as shown by his "liquid assets" (*el impuesto sobre los haberes liquidos*). By this term he wishes to denote the means of the individual as conditioned by his needs, or the proportion between income and property on the one hand, and the claims made upon him by expenses on the other. Piernas-Hurtado thus simply attempts to put into plain language the marginal utility theory of taxation, as developed by recent Dutch and Austrian writers. He confesses that this alone will not remedy social evils, that it is not susceptible of an exact mathematical computation, and that it may give rise to arbitrariness; but he maintains that the other suggested

bases of taxation disclose the same or greater defects. Regard for the individual position of the contributor is in his opinion the really important consideration. The vagueness of this test as a practical programme of taxation will at once strike the reader; but Piernas-Hurtado is content to leave the discussion in the field of theory.

In treating of the various classes of taxation, he later makes many good and practical suggestions. The whole of his second volume is in fact devoted to the history and criticism of the state, local and colonial public finance of Spain; and he clears up much that Parieu and other writers have failed to explain. Like so many of the continental tax reformers, he sees the greatest promise of improvement in the substitution of direct for indirect taxes, and he devotes a considerable portion of his work to the proposed adjustment of the Spanish public revenues to the principles of uniformity and universality. Several chapters on the theories and practice of public credit, and especially on the budget and financial administration, conclude a work whose open-mindedness, clearness and wide range of view entitle it to an honorable place in the list of text-books of finance.

IV. *Switzerland.*

Switzerland is the only European country where the general property tax still plays an important rôle. It is the one state whose methods of taxation bear a close resemblance to those of the United States. It would, therefore, be reasonable to expect that a work of such prodigious proportions as that of Professor Schanz on *Taxation in Switzerland in its Development since the Beginning of the Nineteenth Century*[1] should be of the utmost importance to all Americans; and this expectation is realized.

[1] *Die Steuern der Schweiz in ihrer Entwickelung seit Beginn des 19 Jahrhunderts.* Von Georg Schanz. Stuttgart, J. G. Gotta Nachfolger, 1890. — 5 vols., large 8vo, 384, 487, 383, 289, 489 pp.

Rarely in the history of economic literature has a work been published which is at all comparable to this in its value to the American student of finance.

Professor Schanz earned his reputation by the thorough work displayed in his *Englische Handelspolitik gegen Ende des Mittelalters*, published some fourteen years ago, as well as by several minor works on the history of labor. In 1884 he started the *Finanz-Archiv*, which is still the only serious review devoted exclusively to the science of finance. In this periodical he has been publishing for the past few years detailed histories and descriptions of the tax systems of different German commonwealths, which have challenged admiration for their solidity and accuracy. Now he offers to the scientific world a work which stands unequalled in magnitude of scope and detail of treatment.

A word first as to the methods of the author. The opening volume is devoted to a sketch of the general development of Swiss taxation. A preliminary chapter treats of the federal taxes and of the general situation; a second chapter, of the general direct taxes in the cantons; a third chapter, of the licenses, succession duties, military tax, *etc.;* a fourth chapter, of the indirect taxes on consumption; while a final part is devoted to the questions of local taxation. The three following volumes take up each of the twenty-five separate cantons in detail; describe the history, not only of all the changes, but of all the attempted reforms; and close with a minute statement of the existing condition in each. The fifth and final volume contains the text of all the important tax laws and administrative ordinances for each canton since the beginning of the century. It will be seen at a glance how stupendous must have been the labor necessary to complete such a task.

Let us now endeavor to ascertain in what respects the work is important to Americans. Professor Schanz begins by accepting the theory advanced by the present writer regarding the historical development of taxation and the position of the general property tax in this development.

He shows that Switzerland, like the United States, has retained the mediæval property tax up to this day; but he further shows that Switzerland, unlike the United States, has successfully endeavored to reconstruct its property tax and to supplement it by another system which has brought it more into harmony with the needs of the present century. The conception of general property as the basis of taxation has been permeated, gradually but with ever-increasing rapidity during the past thirty years, with the ideas of product and of income. The attempt to realize the principle of ability to pay has resulted in dissatisfaction with the old property tax and a remodelling of the whole system. The methods in the various cantons may be summed up as follows: (1) a property tax plus a general income tax; (2) a property tax plus a partial income tax; (3) a property tax plus a supplementary income tax, in the sense that only the surplus income above a certain percentage, supposed to represent the interest of the taxable property, is assessed; (4) a real property tax plus a general income tax. Only three of the smaller cantons still hold to the general property and the poll taxes; while only one canton clings to the once universal, but still more primitive, system of the land tax.

This is the one great lesson to be drawn from Swiss experience. It ought to be sufficient to silence all those enthusiasts who cry out for a retention of the present American system, and point with triumph to the only democratic republic in Europe as practising the same methods. On the contrary, the one great effort of the Swiss legislatures during the past half-century has been to supersede the general property tax, not necessarily by the income tax, but by some form of income taxation — by some system which, directly or indirectly, makes not property, but product, the basis of taxation. As Professor Schanz sums it up: "Ueberall drängt sich eben mit elementarer Gewalt der Gedanke durch, dass es doch nicht das Vermögen, sondern das Einkommen ist, welches man eigentlich treffen will."

Let us now leave this main fact, which might amply serve as a text for a whole volume, and turn to some of the other points of interest. The author does not discuss the question of taxation of corporations as a whole, but presents the facts, the most important of which have been used in another chapter of the present volume. Other points upon which the Swiss experience is extremely instructive are the different rates of taxation for various kinds of property; the methods of assessment, according to market value, insurance value or par value; the exemption of church or other property; the distinction between funded and unfunded income; and the subject of double taxation in all its various forms. But the four chief points which deserve special emphasis are these: the methods of controlling assessments, the question of progressive taxation, the succession taxes and the system of local taxation.

Switzerland, like the United States, has tried all forms of assessment for the general property tax — self-assessment and official assessment, oaths and no oaths, publicity and secrecy; and these have proved equally inefficient. One institution, however, has been developed in the last few decades that is peculiar to Switzerland. It is that of the inventory (*Inventarisation*). As soon as a taxpayer dies, his entire property is seized by the government and held until an exact inventory is made. If this discloses fraud in the previous self-assessments, punitive taxes must be paid, ranging in some cantons over a period of ten years. This method of control is based on the right idea; but it has its objectionable sides. It must be distressing, to say the least, to the family of the deceased when the tax officials clap their seals on the property, as it were in the very chamber of death. It has also its weak sides, for those who have even a short time to prepare for death commonly give away a large part of their property. Again, the inventory naturally becomes a less trustworthy guide the further back we go, so that at its best it can serve only as a partial index. But notwithstanding these defects, it has done good service

in increasing the tax receipts, and it forms to-day one of the chief subjects of dispute in the Swiss cantons.

Another point which has attracted attention is that of progressive taxation. Switzerland has now definitively accepted the principle of graduated taxation; and the cantons apply it not only to inheritance and to income taxes but also to property taxes. Especially since 1870, a large majority of the commonwealths have inserted the principle into their constitutions, and only a few constitutions fix the limit of the progression. The system, far from causing any wholesale exodus or any such startling confiscation as we read of from time to time in the newspapers, has proved so satisfactory that, wherever tried, it has never been abandoned. There also, Switzerland is not at one with the United States.

Thirdly, about two-thirds of the Swiss commonwealths have rounded out their system of direct taxation by taxes on inheritances and on bequests. This movement is an old one, and has gone hand in hand with the movement to supplement the property tax by an income tax. The United States are still in the first phases of the reform; for until very recently the agitation was confined to an extension of the collateral inheritance tax. Switzerland has passed beyond this phase, for its system applies to all inheritances and bequests, with a rate ranging from a fraction of one per cent in Zug, to as much as twenty-five per cent or even more for non-relatives in Uri.

Finally, the methods of local taxation are instructive. Only a few cantons pursue the same system for both local and commonwealth purposes. In most cases the income tax is a commonwealth tax, while the local tax is a property tax, and often a real property tax. In addition to the local property tax, however, we find very generally a local "household" tax, which is practically a system of poll taxation designed to reach some of those who escape the real property tax. The local tax system is moreover marked by two significant facts. In the first place, the idea of progression,

which is commonly applied to the commonwealth taxes, is absent in the local taxes, which are almost uniformly proportional. Secondly, the exemption of debts — mortgage debts as well as others — is permitted in state taxes, but is allowed only to a very limited degree in local taxes.

Enough has been said to show the importance of Professor Schanz's work. It does not pretend to discuss questions of theory, and yet almost every page contains matter of more significance to the average American than whole chapters of some of the usual manuals of finance. In some few questions of finance Switzerland has a little to learn from us; in most matters we have important lessons to learn from Switzerland. What these lessons are has been only faintly outlined in the above remarks; but it is to be hoped that their full significance will erelong be appreciated by every American student and by every American legislator.

V. *England.*

English economic literature has not hitherto been very fortunate in its systematic studies of fiscal problems. The writers prior to Adam Smith concerned themselves only with scattered questions of temporary practical interest, and dealt with them in the same scrappy manner which characterized their treatment of economic problems in general. There was, in England at all events, no true science of political economy; there could not well be a science of finance. Adam Smith, taking his cue, perhaps, from the French writers, for the first time sought to connect fiscal questions with those of social economy. In his happy way he combined the abstract discussion of fundamental theories with the explanation and criticism of actual conditions, avoiding on the one hand the metaphysical vagaries of the Physiocrats and on the other the plodding monotony of the German "cameralistic" compilations. But while Adam Smith gave a decided impulse to the study of fiscal problems on the continent, and thus initiated a movement which

has resulted in the elaboration of the modern science of finance, his success in rousing a like interest in England was far less marked, although his influence on English fiscal practice was great. The mighty genius of Ricardo, however, turned at once to the core of the problem. He confined himself almost exclusively to an investigation of incidence, regarding a tax simply as an addition to the cost of production and treating all tax phenomena as mere illustrations of changes in value. Taxation with him became a minor part of general economic theory. So weighty was his influence that even Mill, who in other parts of his *Political Economy* pursued a quite different policy, gave in his fifth book nothing but a succinct analysis of the shifting and general effect of taxation, scarcely deigning to descend to the facts of everyday life or to do more than touch upon the difficult details of principle. Although a few other writers did more than this, their discussions were forgotten amid the plaudits showered on Ricardo and Mill. Thus it happened that, while on the one hand we had numerous descriptive works, written for practical purposes, on the chief facts of public finance, and on the other hand numerous appendices to general treatises on economics, dealing with a few points in fiscal doctrine, there came to be an almost complete divorce between fact and theory. The practical writers did not concern themselves with theory, and the economists were for the most part content to work in what might be called a fiscal vacuum. McCulloch was the one important writer to form an exception, and he was not sufficiently successful to find either admirers or successors.

Another reason which may be adduced to explain the more rapid growth of the science of finance in France and in Germany was their relatively inferior fiscal system. It is not the excellence but the defects of economic life that have always led to the elaboration of economic theory. The shortcomings of mercantilism produced Adam Smith; the abuses of the *ancien régime* brought forth the Physiocrats; the dangers of levelling and the evils of the poor law gave

us Malthus; the currency confusion and the corn laws were responsible for Ricardo. Had there been no agricultural, no industrial, no commercial troubles, we should not have had Mill and the whole host of modern specialists. So with the problems of public finance. The abuses on the continent were so serious that they gave rise to important political contests, and thus led the scientists to attempt a general clearing up of vexed questions in fiscal policy. In England tax problems (with the exception of the free-trade controversy, which was far more than a mere matter of taxation) did not agitate the people to any great extent, and their solution was contentedly left to the practical common sense of the English statesmen. It is significant that in the one department of public finance which did seriously enter into politics, namely, that of public debts, the English writers have done better work than those of the continent. But the comparative excellence of the English revenue and budgetary system, combined with the general prosperity, in themselves contributed to hinder the growth of fiscal theory.

Of late years the conditions have changed. The disproportionate increase in public expenditures and the immense development of local needs have materially strengthened the consciousness of fiscal pressure, while the growth of democracy on the one hand and the complications of recent industrial development on the other have brought to the front questions of theoretic justice which necessitate the revision of fundamental doctrines. In England as in America, fiscal problems have become no less important than in continental Europe. It is thus natural to expect henceforth a deeper study of the subject-matter by those who in the wilderness of confusing party contests blaze out the path of truth and progress.

Professor Bastable's book on *Public Finance*[1] is the first scientific result of this new interest in fiscal problems in Eng-

[1] *Public Finance.* By C. F. Bastable, LL.D., Professor of Political Economy in the University of Dublin. London, Macmillan & Co., 1892. — 8vo, xx., 672 pp.

land. His volume marks a distinct epoch in the history of English economics; for it is the first attempt to set before English readers the science of finance in its modern garb. To many it will introduce an entirely new set of discussions; and especially to the English reader who is not familiar with foreign tongues, the volume will be welcome. This will be our excuse for dealing with it so fully.

To all those acquainted with the *Theory of International Trade*, published a few years ago, as well as with his recent *Commerce of Nations*, Professor Bastable is known as a clear and careful thinker, without any intellectual vagaries, and with marked sobriety of judgment. The same traits conspicuously reappear in the present volume, and they are reinforced by evidence of accurate scholarship and familiarity with foreign literature. In order to be sure of one's own conclusions, one must first know what others have said; and it is the neglect of this elementary rule that consigns so much of so-called scientific writing to the waste-basket. It must not be supposed, however, that Professor Bastable is a slavish adherent of his foreign predecessors. His volume is by no means without independent suggestions; and it is precisely this independence of thought that invites occasional criticism.

In the first place, it is to be regretted that Professor Bastable does not employ the term "science of finance." It is true that "finance" is used in English to include private as well as public finance, and that several books on "finance," like those of Jevons and Giffen, deal chiefly with monetary problems. This unclearness, however, attaches to the word in foreign languages to almost the same degree. The French speak of *la haute finance*, and the number of titles on what might be called "private" or "monetary" finance is legion; yet this has not prevented them from using the phrase *science de finance* or *science des finances*, as the technical term for public finance. The whole matter was there discussed and laid to rest years ago by Joseph Garnier. In Italy and in Germany the matter of terminology has reached a similar settlement.

It is therefore to be deprecated that Professor Bastable should not have pre-empted the phrase for English scientific use. Sooner or later we shall have to conform to the usage of the French and the Italians.

The introductory chapter on the history of the science gives a clear picture of the main lines of development. Some mention might, perhaps, have been made of the discussions in mediæval Florence, which in some points foreshadow modern doctrines. Moreover, if a fuller history of the science in England is ever written, attention will have to be paid to writers to whom may be traced much of what is to-day current coin in fiscal discussions. To speak only of nineteenth-century authors, Frend, Craig, Buchanan, Buckingham and Sayer will be able to hold their own with many of the German writers whom their compatriots delight to honor.

An important point in which the volume differs from some others is the inclusion of the subject of public expenditures. It is a difficult and delicate task rightly to proportion the space to be devoted to this topic in a work on finance. From one point of view public expenditure is simply administration; from another point of view it is political economy in the original sense of the term. How far government should assume definite functions is a problem of economic politics; in what manner it should actually carry on these functions is a problem of administration. Yet almost every political or administrative act involves some outlay, and is in so far a fit subject for discussion in systematic works on finance. Professor Bastable, in dealing with this branch of his work, has avoided on the one hand unsuitable details, and on the other mere commonplaces.

It is in the next three books that are to be found most of the controverted doctrines, and it is naturally here that the critic will be apt to take issue with the author. Professor Bastable first takes up the classification of public revenues. He sees the inadequacy of the older continental division into taxes and lucrative prerogatives (*regalia*) and correctly relegates the latter class to the limbo of *überwundener Standpunkte.*

But he is equally aggressive in his onslaught on the class of "fees," the creation of which he ascribes to "a want of analytic power in the originator." He simply distinguishes between taxes and what he calls in some places "semi-private economic income," and in other places "public economic income."

It will be questioned whether Professor Bastable is not here taking a step backward. He shows, it is true, the many inconsistencies of recent writers. But does it not seem unwise to cut the knot in despair of untying it? In refusing to acknowledge fees as a separate class, the author only creates fresh difficulties. Where, for instance, shall we put school fees? They are surely not industrial income; and Professor Bastable himself would not class them among taxes. And where shall we put the charges for marriage certificates, and sheriff's fees, and copyright payments, and a host of other similar receipts? The author later speaks repeatedly of "economic receipts" as different from fees, as well as from taxes, seeming to forget that in the earlier portions of the volume he includes fees in the "economic receipts." Further, why speak so frequently later of the "fee principle" as opposed to the "tax principle," if fees do not form a separate class?

Again, Professor Bastable sharply separates economic from compulsory receipts; but he fails to distinguish between different kinds of compulsory receipts, and assumes that all of them are taxes. Where, then, shall we put fines and penalties? They are certainly compulsory receipts, and just as certainly not taxes. Where, too, shall we put special assessments, which are completely ignored by him? In fact, it almost seems as if the author, in the endeavor to simplify matters, has really added to our difficulties.

A similar criticism may be urged against his classification of taxes. He objects to all the recent methods, and reverts to what is virtually Adam Smith's classification into primary and secondary. But it is hard to see why a tax on the property of a living person should be primary, and that on

the property of a deceased person, in the shape of an inheritance tax, secondary ; or why a tax on the business of a corporation should be primary, and a tax on the receipts of a corporation secondary. It may also be noted that, when he calls attention to the distinction between direct and indirect taxes made by practical "financiers," his statement applies only to French, not to English or to American practice.

The book on the whole exhibits independent judgment, although in a few instances the author allows his German models to influence him unduly in matters of nomenclature. Thus he introduces the German distinction between the "object" and the "subject" of taxation, meaning by the former the thing on which, and by the latter the person on whom the tax is imposed. This is not English. When we speak of the subjects of taxation, we mean not the taxpayers (or "subjects," in Professor Bastable's language) but the phenomena subjected to taxation (or "objects," in Professor Bastable's language). And when we speak of the objects of taxation, we commonly mean the aims of taxation, not the things taxed. In other words, the author's (German) "tax object" is really the English "subject"; and his "tax subject" is the English "taxpayer" or "taxbearer," as the case may be. Again, the terms "forward incidence," "backward incidence," and "diffused incidence" are not English ; moreover, they confound the terms incidence and shifting. Finally, when Professor Bastable employs the word "rated" tax as opposed to "apportioned" tax, he is ignoring the equivalent term, "percentage" tax, which has become quite common, and which clearly expresses the meaning on its very face.

But all these matters, it may be said, are of minor importance. The crucial point is not so much the arrangement and terminology as the substance, and in the substance of the book the author must meet with greater appreciation.

Passing over the chapters on the state domain, the industrial domain, and the state as capitalist, in which he always seeks to maintain the golden mean between

the *laissez-faire* theories of the earlier English writers and the semi-socialistic doctrines of the modern German authors, we come to the more difficult problems of taxation.

A good account is given of the theory of benefit, which is discarded as the general basis of taxation; but less satisfactory is the discussion of the theory of faculty. Professor Bastable speaks of its "convenient vagueness," but does not really make any serious effort to give a deeper analysis of the doctrine. He tells us of Mill's doctrine of "equal sacrifice," but does not succeed in correlating it with the doctrine of ability. His whole discussion of the theory of progressive taxation is therefore not quite up to the level of recent investigation. On other points, too, he is very conservative. He opposes the differentiation of the income tax, which was demanded by Mill and accepted by Disraeli; he seems to be opposed to graduation in the inheritance tax, which was also demanded by Mill and which has now been definitively introduced into English practice; and he even differs from the conservative French writers in disapproving of progression in the income tax as a counterpoise to regression in other taxes.

On the other hand, the discussion of the incidence of taxation is good. The author shows the weakness of both the diffusion theory and the absolute theories of Smith and of Ricardo, and calls attention to the complicating conditions of modern society. It might be urged that his analysis is not rigorous enough in the case of the taxation of profits; that not enough attention is called to the distinction between monopolies and competitive undertakings; that the house tax is viewed only from the characteristically English point of view as being assessed on the occupier; and that the general capitalization theory is not brought into due prominence. Nevertheless, the treatment as a whole is far superior to that found in most of the manuals on public finance.

Perhaps the least satisfactory part of the work is the discussion of universality of taxation. Double taxation, as we know, is of importance chiefly in federal states; and that

is no doubt the reason why a book written primarily for Englishmen pays so little attention to it. But international relations are here of increasing importance and deserve more than the half-page allotted to them. Moreover, the conclusion itself is not beyond criticism. "The more modern solution," he says, "would be that the income tax should be levied by the country of residence, the land or property taxes by that of situation." What, then, shall be done if the income is derived from land; or, conversely, if the property consists of intangible goods? Whatever we say about this, it is to be regretted that the author passes over the other forms of double taxation. Even if there were no space for details, the main points of the controversy should at all events have been outlined.

The following book, on the several kinds of taxes, shows the author at his best. A broad knowledge of the facts of taxation in all the important countries, and a wide acquaintance with the special literature, enable him to give a concise and clear account of actual conditions, as well as of the chief movements for reform. He suggests a judicious combination of the three principal forms of taxation as best calculated to reach substantial justice.

So far as the practical problems of American taxation are concerned, Professor Bastable opposes the suggestions for a direct income tax to replace the local tax on personal property, and he also deprecates the taxation of gross receipts of corporations. His statement that "the most promising sources of state revenue seem to be the real property and the license taxes" is, however, obviously a slip. Americans will also take exception to the assertion that "taxation of inheritances is unsuited for a community where the family is the unit of society and property is really held by corporations, not by individuals." There is an obvious discrepancy between this and the author's statement that "taxation of corporations is the taxation of their members." This last statement again is unclear. Do the "members" of a corporation mean its stockholders, or its bondholders, or both? The discussion

of these questions, which have led to some of the most perplexing problems of public finance in America as elsewhere, ought not to be so lightly "eliminated."

We have not hesitated to call attention to some of the minor defects in Professor Bastable's volume or to indicate a belief that it will not be found wholly satisfactory for the American student. We must, however, remember that it was written primarily for Englishmen. It is to be hoped that no one will leave these criticisms with the idea that the book can be lightly cast aside. It is so admirable in arrangement, so accurate in statement, so catholic in temper, so sagacious in judgment, and so broad in erudition, that it will undoubtedly give a new impetus to the scientific study of fiscal problems in England.

CHAPTER XIII.

RECENT AMERICAN REPORTS ON TAXATION.

THE history of official attempts to reform the systems of state and of local taxation in the United States may be divided into two periods, the one comprising the decade almost immediately after the completion of the Civil War, the second including the last ten years. During the earlier period taxation was light, and the tax methods were not yet out of touch with the comparatively undeveloped industrial conditions. The only report deserving of mention was that of Connecticut in 1844, which treated of some minor points. But after the close of the war, the rapid advance in industry and commerce made the defects of the existing system more easily apparent, thus leading to a more extended discussion. The earlier New York report of 1863 had contented itself primarily with collecting facts and statistics; but beginning with 1867, the Eastern states, like Pennsylvania, New York, New Jersey and Connecticut, in rapid succession offered suggestions for removing some of the evils which were then beginning to be felt.

I. *New York and Massachusetts.*

The most comprehensive of these earlier documents is the well-known double report issued by New York in 1871–72, and written chiefly by Mr. David A. Wells. This may really be called the starting-point in the discussion of modern American problems. Not only did it contain an immense mass of information as to actual facts, but it gave an account of the prevalent legal conditions, which is exceedingly valuable even to-day. Above all, it attempted for the first time to

lay down certain guiding principles. The two practical questions to which the report primarily addressed itself were the taxation of personal property in general and of indebtedness in particular. It took the position that in order to tax equitably and uniformly, it is not necessary to tax everything; and it proposed to replace the existing tax on personalty by a taxation of house rent on the occupier.

Important as was its treatment of practical problems, and indispensable as it is to all present-day students, the value of the report is somewhat impaired by two defects in theory. In the first place, Mr. Wells, like almost all of the English and American economists of the period, was an energetic upholder of the benefit theory of taxation — the doctrine that the taxes due from each individual are merely the price paid for the protection which government affords him. Secondly, Mr. Wells espoused the general diffusion theory, maintaining, as did Thiers before him, that "all taxes tend to equate and diffuse themselves with unerring certainty and equality."[1] It was not necessary for Mr. Wells to take this position, for many of his practical conclusions might have been upheld on other grounds.

The second important report of this earlier period is the Massachusetts report of 1875, which took issue with the New York commission on these two points. The theory of protection was shown to be inadequate and untrue; and for the first time in any American official document the doctrine of faculty was vigorously defended. The general diffusion theory was denied, and some strong arguments were presented in opposition. In these respects, it is unquestionable that the Massachusetts report is more in harmony with modern ideas than are the two New York reports.

As regards the practical question at issue, however, the Massachusetts commission sought to uphold the existing system. The objections to the New York proposals were those which have always been urged, and which will always be

[1] For a criticism of this doctrine, see my work *On the Shifting and Incidence of Taxation*, chap. i., sec. 4.

urged, against any plan simply to exempt personal property from taxation. To confess that the tax on personalty is a failure is one thing; to urge the repeal of the personal property tax without offering an adequate substitute is quite another thing. What the New York commission did was to suggest a partial substitute in the shape of a tax on rentals. This was a good suggestion, as far as it went, but it alone would not suffice. The Massachusetts report discerned this shortcoming; but because the commission did not see its way to expand the suggestion or to propose some additional substitute, it threw over the whole New York plan and maintained the adequacy of the existing system. This was illogical. The Massachusetts report, with all its clear and able discussions, must therefore be declared distinctly inferior, for all practical purposes, to its predecessor.

With the New Hampshire report of 1876, which followed in the main the recommendation of the New York commission, the first period may be said to come to a close. For the next ten years the interest in the matter seems to have slumbered. In 1880 New Jersey, and in 1884 West Virginia, did indeed issue reports; but their treatment of the subject was not strong and their influence was slight.

II. *Illinois and Maryland.*

The second period, which began with 1886, brought with it new problems. In addition to the former questions of the taxation of mortgages and of personal property in general, the public was now beginning to consider the relations of local to state revenue, the growing intricacies of interstate taxation, and the questions connected with the newer forms of taxation like the corporation tax and the inheritance tax. The whole discussion was fast becoming more complex.

The Illinois report of 1886, although slight, is important for one step in advance. It advocated a complete divorcement of state revenue from local revenue. As the only way to

avoid the evils of the system of equalization, the commission suggested that the property tax be confined to the local bodies, and that the state revenues be secured from a system of corporation taxes. The plan was not thoroughly worked out; but the fruitful idea of separation or segregation of sources of revenue was urged. This was indeed not absolutely new, for the New York state assessors had already advanced the same plan during the preceding decade; but we now find it worked out for the first time in the history of official commissions. The limitation of the general property tax or, still better, of the real property tax to the use of the local bodies is a good plan, if only for the reason that it generally is an apportioned tax; for apportioned taxes are never suitable for state purposes. Everywhere throughout the United States, as in Europe, there exist two methods of levying taxes. According to the first method, state taxes are assessed by state officers, in given lump sums of so many thousand dollars upon each county, and the county then divides this lump sum among the ratables. According to the second method, the state officers simply fix upon a certain quota or percentage, which is to be imposed on every hundred dollars of property throughout the state, as valued by the local assessors. In the apportioned taxes, the yield of the tax depends on the quotas of the individuals; in the percentage taxes, the quotas of the individuals depend on the amount to be raised. In most of the American commonwealths the property tax is apportioned, and the consequence is seen in the crying inequalities between the counties and in the crude contrivances of boards of equalization. Were the real property tax to become local, as is now the case in England and in Prussia, we should escape the inequalities and the makeshifts of boards of equalization with which we are so familiar. The same difficulty confronts France with her general land tax. The project of separating local from state revenues is hence a good one; and for this suggestion the report will always remain noteworthy.

Two years later, the Maryland report was issued. The Maryland commission had the good fortune to number among its members a student who had given considerable attention to the theory of finance, and who was acquainted with the history and actual practice abroad as well as at home. Professor R. T. Ely not only succeeded in inducing the commission to accept some noteworthy amendments, but added a supplementary report of his own, in which many interesting and valuable ideas are to be found.

The report proper points out that the Maryland system of direct taxation possesses some advantages over those of neighboring states. The assessors are appointed, thus minimizing the danger of improper influences; the assessments are made by county officers, thus avoiding petty jealousies and efforts to reduce the assessments of localities; and the same basis is used for state and county taxation, so that no county can reduce its assessments without reducing its own resources. The disadvantage of the Maryland system in general is that there are no periodical assessments. But the one defect which Maryland discloses in common with other states is the inadequacy of the personal property tax. Although its failure is notorious, the commission contented itself with the proposal to exempt the book accounts of merchants when the stock on the shelves is assessed. Professor Ely, in his supplementary report, went further, and advocated a total exemption of personal property, which would necessitate a change of the constitution. The chief proposals of this supplementary report are: the exemption of real estate from state taxation; taxes on corporations and an income tax as the chief sources of state revenue; a tax on real property and a tax on the rental values of places of business as the chief sources of local revenue.

In this scheme there are several points to be noticed. The plan of separating the local and state revenues has just been discussed. The proposition of an income tax is open to more question. Many of our tax reformers recommend the entire exemption of personal property. That in itself, however, is

not sufficient; for it would simply result in an undue burden on real estate. Some form of income taxation is necessary in order to reach those who would otherwise go untaxed; but whether this should take the shape of a direct tax on income is far from certain. At all events the discussion in the report is not by any means full enough. Furthermore, even granting the expediency of an income tax, it is questionable whether it should be a state or a local tax. The argument against the income tax as a local tax is that it might lead to a loss of business or of population; but the same objection may be made to a state income tax when compared with a national income tax. The mere proposition of an income tax brings up a host of questions which the report does not attempt to treat. Again, the recommendation for the taxation of railroads through gross receipts according to the Wisconsin license fee system appears to be a mistake, since the just basis of corporate taxation, as of taxation in general, is net earnings. The gross earnings tax, as we have seen, is like the tithe on lands; it bears no proportion to the ability of the taxpayer, because it takes no account of expenses. The most significant parts of the supplementary report, it may be said in conclusion, are the criticism in detail of the practice of the general property tax, and the elaboration of the idea of utilizing for sources of municipal revenue what Professor Ely terms the natural monopolies.[1] Appended to the report is an interesting, but anonymous, historical sketch of taxation in Maryland.

III. *Maine and Pennsylvania.*

Partly as a result of this able Maryland report, but chiefly as an outgrowth of the discontent now manifested in other sections of the country as well, tax commissions soon multiplied. During the next few years reports followed each

[1] Professor Ely's supplementary report was subsequently reprinted with additions, and published as his well-known work on *Taxation in American States and Cities.*

other in rapid succession. As they all belong to recent history, it may be well to discuss them somewhat more in detail.

In 1890 the Maine tax commission issued its report. This is valuable for its facts as to the tax system. The tables give a digest of the legal provisions of the most important states on the listing system, equalization, the poll tax, the dog tax, and the taxation of railways, insurance companies and savings banks. Some of the tables, however, are exceedingly fragmentary. The only one that is complete and trustworthy is that published as an appendix concerning the tax on insurance companies.

As regards the report itself, not much can be said in commendation. For instance, the commissioners confessed "to having been compelled to acknowledge the logical soundness of many views advanced" by recent economists, and yet they say that these views "are at variance with the conclusions at which we have arrived." Their excuse is that it is "better to err upon the side of conservatism." The practical outcome of the commissioners' studies is that the failure to reach personalty may be overcome by the plan of requiring sworn detailed inventories of all property; and the proposed law contains provisions to this effect which the commission calls "strong and mandatory." This is the old, old story. Personalty escapes; *ergo*, try to reach it by more rigid methods. Of course the result can be foretold.

The value of the commission's ideas may be gauged by the knowledge displayed of the science of finance. Thus we find the remarkable statement that the single tax on land values is the system which most European countries have adopted. When the present writer wrote to the commission for an explanation, the astounding answer was sent that the commissioners had learned this fact from one of his own articles! Again, on the very next page the commissioners confuse the single tax on land values with the tax on real estate. Further, in discussing the income tax (which they reject) they repeat the statement that to tax property and the income from property is intolerable because it would involve

double taxation. When will our commonwealths learn to put the solution of such knotty questions into the hands of experts, instead of laymen?

The report is redeemed, however, by some wise suggestions. Thus in regard to the taxation of mortgages, it accepts in a large degree the contention of the present writer, although it quotes an entire paragraph which it erroneously credits to Amasa Walker, who entertained the contrary opinion. The practical conclusion is the recommendation of the Massachusetts system, which regards the mortgage as real estate and divides the tax between mortgagor and mortgagee. The commission, however, seems to be ignorant of the provisions of the California law, which avoids some of the shortcomings of the Massachusetts system. In regard to new taxes, the commission proposes the collateral inheritance tax, a tax on all private and special acts passed by the legislature, and a slight extension of the corporation taxes. Some of these proposed changes have since been adopted.

Of more importance are the papers contained in the reports of the Pennsylvania revenue commission of 1890. Pennsylvania is the only state in the Union which has seriously grappled with the problem of reaching the abilities of those that receive a revenue from other elements besides real estate. Her revenue laws of the last fifteen years have put her easily into the front rank of the American commonwealths. Yet just because so much progress has been made, the demand for further reform is stronger in Pennsylvania than anywhere else.

The commission of eight members was unable to agree. In consequence we find four separate reports, of very unequal value. The majority report, signed by five members, is the weakest, as it is the shortest. As but little attention was paid to this report, we may pass it by. The main point of the majority, who disclaimed any attempt to change the system of state taxation, was to improve the local system by compelling every person to answer a list of interrogatories as to his personal property, and to provide for

the publication of all details. All moneys and credits were to be made taxable; every obligation or other evidence of debt that was not returned in the assessment list was to be uncollectible by suit, and all interest on such debts was to be forfeited. In other words, the majority would institute a system by the side of which the most inquisitorial income tax ever known would be a mere plaything. To suppose that Pennsylvania would ever take such a retrograde step was to insult the judgment of her legislators. Furthermore, all transportation and transmission companies were to be made liable to local taxation in the following manner: after ascertaining the average value per mile of the entire property, each county was to multiply this by the mileage in the county and to lay a tax of four mills on the result. This plan was crude; for the large cities or towns in which the property or terminals are of immense value would get no more revenue than the little villages. Average value according to mileage is an inequitable basis for local taxation, because some localities will get far more, and some far less, than their just share.[1] In short, there is scarcely a recommendation in the majority report which does not fly in the face of experience and contradict the teachings of sound finance.

As a result, the three minority reports savagely attacked the majority report. The auditor-general brought in a bill, the main feature of which was the reduction of local taxation at the expense of state revenue. He proposed that the commonwealth treasury should assume a further share of the expenses of local government, or that it should relinquish to the counties more of its surplus revenues; and furthermore, that local taxes should be imposed on moneyed capital, on capital invested in business, on shares of stock in corporations, and on gross earnings of private bankers and brokers.

[1] The objection to average value according to mileage attaches less strongly to state taxation because it rarely happens that nothing but the terminal is in a different state from the line proper, and because the question of way- *versus* through-traffic plays more of a rôle in interstate than in interlocal commerce.

Mr. Albert S. Bolles approved of the income-tax project to be mentioned in a moment. His report is noteworthy for the few words he has to say on the tendency toward inequality as the result of the incidence of the property tax. He maintained that the chief revenue of the state should be from railroads, and that most of the other subjects of taxation should be surrendered to the counties.

The chief part of the report, both in quantity and in quality, consists of the three papers by John A. Wright. These papers constitute a comprehensive plan for an adjustment of the whole system of state and local taxation, and deserve our attention.

As regards state taxation, Mr. Wright lays down twelve principles, which may be summed up in these words: a universal income tax, without deduction for debt, without exemptions, without differences of rate, applied to individuals and to firms as well as to private corporations. He showed that Pennsylvania practically had indirect income taxes already in the mercantile license taxes and the occupation taxes, and direct partial income taxes on bankers, brokers and certain corporations. What he desired was an extension and consolidation of this system. His plan is that the state should tax (1) the net income of corporations with a few exceptions, (2) the amount of sales of all merchants, (3) the gross income of all individuals from trades, professions and occupations, with provisions to prevent inquisitorial proceedings. On the other hand he would have the local divisions tax real estate, horses, mules, oxen and vehicles, and levy certain licenses.

There are many striking points in Mr. Wright's papers. His scathing criticism of the majority report, his appreciation of the injustice of the property tax, his argument that revenue and not property should be the basis of taxation, his proof that an income tax is really less inquisitorial than a property tax, his grasp of some of the difficulties of interstate taxation — all these put his three papers in the front rank of the literature on American finance. On

the other hand, criticisms might be made to show that Mr. Wright is not acquainted with the latest results of scientific thought. Whole subjects — such as the question of graduated taxation, of the distinction between permanent and precarious incomes, and of many problems of double taxation — are entirely ignored. Furthermore, there are evidences of immature, or at all events of not sufficiently penetrating, thought — as on the subject of debt exemption, where his conclusions are not in accord with the better opinion; on the subject of incidence, where the diffusion theory is again dished up; on the protection theory of taxation; and on the question of deductions from income, where the conclusions reached are arbitrary. But with all its faults, his report is one of the best official documents hitherto published on the subject of local finance.

Finally, one last word of criticism. Are not the advocates of the income tax in this country somewhat too optimistic? Do they reckon sufficiently with the opposition to its enforcement, and with the probable inadequacy of its administration? Is it not far better as a piece of practical policy to present the alternative plan of what Mr. Wright himself calls indirect income taxation? Such a system has never yet been worked out in America. We are all agreed in our opposition to the property tax, and in our desire to abolish the tax on personalty. We are also all agreed that the resulting burden on real estate must be diminished. If there is no immediate prospect of an adequate taxation of personal incomes the question therefore arises: How can equality of taxation be attained? It is the one problem with which students of public finance must grapple. No answer has yet been given to it in the United States; but in our judgment, at least, the problem is not insoluble.[1]

[1] In a forthcoming work on *The Income Tax and the Reform of American Taxation* by the present writer, the whole question will be fully treated. For a discussion of the federal income tax of 1894, in some of its relations to state and local finance, see the article by the present writer in the *Political Science Quarterly*, vol. ix., Dec. 1894.

IV. *New York and Ohio.*

The year 1891 was marked by three reports, all of them of minor importance. The Boston tax commission dealt chiefly with that part of the subject of double taxation of peculiar interest to Massachusetts. The Oregon report was insignificant in argument and content, with the exception that it proposed the abolition of the mortgage-tax law — a proposition which, notwithstanding earnest effort, was carried through somewhat later. The New Jersey commission handed in a preliminary and confessedly imperfect report, composed largely of extracts from previous reports and showing that it had not made much independent study of the subject.

Passing over the report of the Iowa revenue commission of 1893, which was of little consequence, we come to the report of the Delaware tax commission of 1893, which consists of two parts. This is interesting as exemplifying the different tendencies at work throughout the country. Delaware raises its state revenues from corporation taxes and licenses, but depends for its local revenues upon the poll tax, the tax on real estate, and on a few kinds of tangible personalty. The farmers objected to this and desired to reach in some way all owners of personalty. Hence the commission. The majority report approves of this desire, and recommends that intangible personalty, like money, investments, *etc.*, be taxed, that a tribunal be created for equalizing county assessments, and that the collateral inheritance tax be reimposed. Although the signers confess that the general property tax does not work well they assert that this is due to "dishonest citizens," and that if certain kinds of property be exempted, "cunning and scheming men" will ultimately reduce the governmental revenues to an undue extent.

The minority report, on the other hand, strenuously objects to the taxation of intangible personalty. Almost the whole of the report is an abridgment of the New York reports of 1871–72 and of the Maryland report of 1888, showing the

injustice of the general property tax. The report adopts in its entirety the diffusion theory of incidence and quotes Adam Smith as the chief forerunner of Thiers and Wells! Although the commissioners "sympathize with the complaint of the Delaware farmer," they think that under the present system the taxes are "more equally distributed than in any other state." It is much to be feared that the Delaware farmer will not be satisfied with this Platonic "sympathy."

Far more important than the Delaware report are those made to the New York legislature in 1893, the one by the counsel specially appointed to revise the tax laws, the other by the joint committee of the Senate and Assembly. Both the counsel and the committee chose to present results rather than extended arguments.

The counsel affirm that they have studied not only the public documents of other states, but also the general literature of the subject, including the views of the leading political economists of the day. They suggest that the information so obtained be collated for the use of the public for further reference; but in the present report they prefer simply to present their conclusions, proceeding on the principle of proposing nothing which has already been before the legislature and which has failed of adoption. Thus they object to the "building occupancy" tax because the legislature refused to adopt it in 1872. If this principle were consistently carried out, there would be little chance for human progress; for most innovations are at first opposed, and the mere fact that the legislature has in former years rejected a plan is neither a proof that they would reject it to-day, nor a reason why the advisers of the legislature should refuse to consider its feasibility. The counsel also discuss new plans. They object to the single tax and even to the tax on real estate alone, because they cannot see the equality and justice of levying all burdens on the real estate owner. They object to the income tax as too inquisitorial, and at present quite inadmissible. At the same time they strenuously oppose

the "listing" system, although they call attention to the defects of the personal property tax.

What, then, is to be done to secure equality of taxation?

The general property tax is to-day supplemented by the corporation tax and the inheritance tax. The counsel object to any great increase in the corporation tax on the ground that this ought to carry with it an exemption of corporations from local taxation, as in Pennsylvania — a plan which they think unwise, because the local bodies are not willing to lose so large a source of revenue. Again, they oppose a tax on corporate bonds: first, because it is at present legally impossible to tax bonds held outside of the state; and, secondly, because bonds are already taxable to the owners as personalty. The only suggestions made as to corporate taxation are: to extend to other corporations the machinery of collection applied to the taxation of bank shares, and to apply the earnings tax on transportation companies to foreign as well as to domestic corporations. As to the inheritance tax, the counsel content themselves with a slight change in restricting exemptions. While apparently regarding with favor the settlement of the mortgage-tax question as in Massachusetts and California, they refrain from any recommendation, because the legislature has heretofore considered the matter and taken no action. They do, however, propose a tax on deposits of savings banks above a certain limit. Finally, they object to "local option," because they clearly see that it simply means taxation of realty alone; and this, they maintain, should be done by a general statute or not at all.

Since, therefore, the present system of taxation is unjust, they think that one of two courses must be adopted: either personalty should be entirely exempt, or substantially all personalty should be taxed. The first plan seems too radical; therefore we must try to reach personalty. This may be done by improving the machinery, by centralizing the administration, and by providing for state equalization of personalty as well as of realty.

The report of the counsel is timid and conservative; but it at least possesses the distinction of not falling into the gross mistakes which so many of our recent state commissions have committed. The report of the legislative committee, on the other hand, is not only in the main sensible, but also radical.

In the first place, the committee agree with the counsel in opposing the income tax and the principle of local option in taxation. Secondly, in opposition to the counsel, they maintain (1) that the taxation of savings-bank deposits would be an undesirable interference with the savings of thrifty people; (2) that the equalization of taxes on personalty "would legalize a system of official guessing," and would only intensify the conflict between the local divisions; but (3) that a state tax on mortgages would be a desirable innovation, producing even at a rate of only one-half of one per cent nearly five millions of dollars. Thirdly, they propose certain changes in the inheritance and corporation taxes, calculated to increase their yield and to equalize the burdens. The progressive principle is to be applied to the inheritance tax, and the exemption of real estate is to be abolished when the estate exceeds \$50,000. The virtual exemption of heavily bonded corporations is to be removed by assessing a corporation tax in such cases upon the par value of the stock, instead of on the market value. Finally, the principle is laid down of a definite separation of the state and local revenues. The changes above suggested in the state taxes will, they believe, suffice to meet all state expenses. Real estate is to be left to the local bodies, and the whole question of local taxation may then be discussed by itself.

It will be seen that the committee's report is the more important. The first condition of improvement in our tax methods is to be found in the abolition of the property tax as a state tax. The idea is not new; for, as we have learned, it has been urged for over twenty years in the reports of the New York state assessors and of officials in

other states like Illinois and Maryland ; and the plan, as we know, is in practical operation in Delaware. This is, however, the first time that the suggestion has been adopted in an important commonwealth by a committee of the legislature itself.

The suggestion of a graduated inheritance tax is in harmony with growing public sentiment ; but the proposed plan of dealing with corporations is not so satisfactory. If the heavily bonded corporation is so successful that it pays high dividends, the adoption of the par value instead of the market value of the stock as a basis would only intensify the present inequality. On the other hand, the counsel are entirely too timid in deprecating a tax on corporate bonds. The taxation of corporations on an assessment equal to the value of their stock and bonds would remove the legal obstacles, and would restore equality of taxation as between the various classes of corporations. Neither the committee nor the counsel, however, see that no form of corporate taxation can satisfy the demands of justice until the problems of double taxation are attacked; and that no adequate solution can be found until interstate agreements are adopted. It is to be deplored that no suggestion of this kind is to be found in either of the reports. The tax on mortgages proposed by the committee, is a makeshift. They forget that to tax the mortgagee on the mortgage and the mortgagor on the whole value of the land is unendurable double taxation. Were the mortgagor to be taxed only on the unencumbered portion of his property, as is the case in many other states, the tax on mortgages would be less objectionable—although even then the plan hinted at by the counsel would be preferable.

We come now to what is perhaps the best of recent reports — that of Ohio. The tax commission of Ohio, appointed in April, 1893, has evidently turned to good use some of the recent scientific writing on public finance. Most of the theories advanced are in accord with the sounder views, and everywhere an endeavor is made to conform to the neces-

sities of practical reform. The commission tells us again how utterly inefficacious the listing system has been in Ohio. The "tax-inquisitor" law produces less than two per cent of the taxes, the greater part of which is paid by the rural counties; while intangible property altogether pays only nine and four-tenths per cent of the state taxes. The commission calls attention to the fact that this is simply a revival of mediæval conditions, and recommends a complete repeal of the act. The attempt to reach intangible property directly by taxation is declared impracticable; and the absurdity of the law is shown by the fact that the personal property tax in Ohio costs in some of the counties thirty-four per cent to collect.

The commission, however, strongly maintains that as the only just principle of taxation is that of contribution according to ability, an effort must be made to reach intangible personalty in some other way. In a well-devised system taxation must on the whole be proportional to income or earnings, and yet the direct income tax is virtually impossible in this country as a state tax. The report is in fact noteworthy: first, because it accepts the principle of faculty, while abandoning property as a test of faculty; and secondly, because although it prefers income as a better indication of faculty, it recognizes the necessity of getting at the income indirectly.

Their solution of the problem may be summed up in a few words: taxation of real estate and tangible personalty; an inheritance tax, increased and extended; a franchise tax on corporations and enterprises; and the beginnings of a system of business taxes, through a tax on transfers of property, on law proceedings, *etc.* A valuable account is given of the taxation of corporate enterprises in Ohio, in which it is shown that while banks pay from seventeen to twenty-three per cent of their net income, and city real estate from fourteen to twenty-five per cent of its rentals, railroads pay only five to twelve per cent. This is one of the most interesting features of the report. The assessed valuation of railroad property is compared with that of 1892, and an attempt

is made to get at the true valuation based on a comparison of gross and net earnings, stock exchange quotations and bonded indebtedness. The results are surprising, but seem to be sound. In fact this part of the report abounds in intelligent comment. The commission earnestly contends that the correct measure of corporate ability for purposes of taxation is income or earning capacity; and it recommends a system of corporate taxation based on the more approved methods. Altogether, the report of the Ohio commission is one of the most cheering evidences of the growth of saner and more enlightened views on the subject of taxation. It does not exhaust the subject, but it certainly goes a great way toward the improvement of existing conditions.

V. *Massachusetts and Pennsylvania.*

The next report is that of the Massachusetts commission of 1894. The Massachusetts system has long been marked by several peculiarities. It taxes incomes; does not tax mortgage notes on real estate; and does tax shareholders of foreign corporations, whether or not such corporations are taxed by their own states. The special committee devoted a considerable share of its hearings and report to the latter point, but decided for the continuance of the present practice. As a matter of fact, although the report contains a few good suggestions, it discloses very little acquaintance with modern views, and is distinctly inferior in this respect to that of the Ohio commission. Thus, for instance, the report does not attempt to recommend any more comprehensive system of corporate taxation, such as exists in Pennsylvania and New York, and it does recommend a continuance of the income tax. In arguing the latter point, it advances the remarkable statement that any attempt to abolish the income tax in England, Germany and France would probably result in a revolution. When we reflect that the French Revolution resulted in the abolition of their income tax and that it has been impossible since the Revolution to create a new

income tax, the force of this statement becomes apparent. We are thus prepared for the final recommendation of the committee, which is nothing more nor less than the introduction of the listing system as the best solution of the Massachusetts tax problems. This is the sorry outcome of a long inquiry.

On the other hand, there are some interesting points in the report. It shows how impracticable the single-tax theory is; for according to the testimony of the single taxers themselves, it would be impossible to raise sufficient revenue in the farming counties; and the poor towns would have to receive aid from the more prosperous. The committee pertinently ask: Where is this aid to come from?

The committee strenuously advocate the introduction of a graduated inheritance tax. They object to the exemption of municipal bonds from taxation; but on this topic there is much to be said on both sides. Finally, they call attention to some of the results of the exemption of mortgage notes, and show that the advantages to the mortgagor have been greatly exaggerated.

The report, therefore, is a mixture of good and bad ideas. It does not propose any comprehensive reform and it does not grapple with the subject in all its bearings. It is on the whole a distinct disappointment, and students will derive more profit from the testimony than from the report itself. As might have been expected, there was little prospect of the adoption of the committee's retrograde recommendations; while the better propositions, like those for an inheritance tax, attracted considerable attention and were subsequently enacted into law. Massachusetts has much to learn before putting herself on a par with Pennsylvania.

We come finally to a series of reports of peculiar interest — those of the Pennsylvania tax conference. The conference was formed on somewhat novel lines. As a result of the tax-commission report of 1890, a bill was introduced in the Pennsylvania legislature, but met with opposition sufficient to defeat it. It was thereupon proposed by one of the

senators that representatives of the different interests of the state be called together to ascertain the facts of taxation in Pennsylvania as compared with other states, and to report a bill which would be satisfactory to these interests. As a consequence, twenty-four representatives of agriculture, transportation, labor, commerce and manufactures, and the tax officials themselves, met at Harrisburg in February, 1892. This voluntary conference appointed committees: one to examine and report upon the value of the various classes of property in the commonwealth; another to examine the tax laws of all the states; and a third to formulate the statement of principles on which the reform should be based. After making some elaborate investigations, the committees began to announce their results. The first to bring in a report was the committee on tax laws. This report, presented in 1892, is valuable chiefly for the three tables which digest the tax laws of the Union and which give in compact form the essential facts. The committee itself make but few recommendations — generally of a sensible character. Some of their statements are erroneous, as for instance, when they say that an income tax has no place in the fiscal policy of any American state. The committee also repeat the old error that the property tax is, and ought to be, based upon the theory of protection. They maintain, however, that an income tax will not be equitably levied by elected officials, and that a single tax on land values will increase the burden on the poor. They find the best feature of the Pennsylvania system as compared with the systems of other states, to be in the separation of the sources of state and local taxation. The committee refrain from making any specific recommendations because the members have not studied long enough to enable them to effect a complete harmony of views. The report, therefore, is primarily important for its presentation of facts.

The next to report was the so-called commission on valuation and taxation. It attempted to ascertain the facts not only as to assessed valuation, but also as to actual value.

This it sought to accomplish by taking the insurance valuations on insurable property, and by making special investigations through separate agents. The preliminary report, which was first presented, contains interesting figures, some of which have been commented upon in other parts of this volume. Many tables are given as to the value of different kinds of property, but no attempt is made to draw any inferences, and the endeavor to ascertain actual values is often acknowledged to be only moderately successful. The valuation of property based on insurance turned out, as might have been anticipated, to be unsatisfactory. The remainder of the report, in addition to a statement of the existing revenues of Pennsylvania, which are put in a very clear form, is devoted to a short description of property in the state exempt from taxation.

During 1893 and 1894 followed reports on the valuation of railroads, other transportation companies, manufacturing corporations and real estate. At the conclusion of its labors the conference submitted a bill, instead of a general report. Its important features may be summarized as follows: —

1. It separates state, county and local sources of revenue. The state taxes on inheritances, on commissions, on municipal loans and on certain licenses, as well as the local real estate tax are left unchanged. But the bill transfers from the state to the counties the important mercantile licenses, several other licenses, the stamp taxes, the fees of county officers, the carriage tax and a part of the personal property tax; and transfers from the counties to the minor civil divisions the tax on horses and cattle. It imposes a new, but slight, county tax on the enrolment of corporations.

2. It changes the state taxes on corporations. Corporations are taxed on the value of their property, determined by adding to the market value of the share capital the market value of the funded debt when less than par, or the par value of the debt when the market value is par or more than par. From this aggregate are deducted (*a*) the

value of real or personal property legally exempt by federal law, (*b*) the assessed value of the real estate locally taxable, and (*c*) the value of the real or tangible personal property without the state. In the case of corporations whose lines or operations extend beyond the state, only the proportionate part within the state is taxed. Foreign corporations are taxed in the same way except that they are not allowed any deduction for their property without the state. This system is to apply to all corporations, except manufacturing corporations, banks, building and loan associations and insurance and trust companies. The latter are, however, taxed separately on their capital stock, except that insurance companies are taxed on premiums.

The bill, so far as it goes, is in almost every respect in harmony with the more modern views. The only criticism that might be urged is the exemption of real estate locally taxable, which is unnecessary, because the state and the local bodies are not identical, but concurrent, tax jurisdictions. The bill was introduced into the legislature in 1895, but was hotly opposed by certain manufacturing corporations and finally failed to become law.

It is as yet too soon to judge of the ultimate result of the work of the conference. It has been a novel experiment, based entirely on voluntary action, and the work has certainly been taken up in the proper spirit. If the practical results thus far achieved do not amount to very much, it is probably due to the weakness of human nature and to the inherent difficulties of the task. Pennsylvania has, however, always been at the head of tax reform in the United States; and we may confidently expect some good results in the future from the labors of the conference.

Slowly, but surely, we are moving toward a readjustment of the American system of taxation. Its ultimate form can already be faintly discerned: separation of state and local revenues; state revenues derived chiefly from corporation and inheritance taxes; local revenues derived from real estate and from the other elements of taxable faculty.

The majority of the recent reports recognize the fact that the problem cannot be solved merely by exempting personalty. They see that the income tax, as a state or local tax, is no solution; and are groping after adequate substitutes. That some form of mortgage taxation will be a part of the new system, is possible; that a more refined system of corporation and inheritance taxation will reach other important classes of personalty, is probable; that additional taxes must be imposed, designed to reach the remainder of individual faculty — and based perhaps on outward signs and presumptions — is not yet recognized by many of the reports. The recognition of this fact, however, will come as soon as the demand for the abolition of the personal property tax has made more headway. Let us be thankful at all events that so many of the recent reports take a step in the right direction. They do not give us by any means all that is needed; but the adoption of their fundamental proposals would make future reforms less difficult.

BIBLIOGRAPHY OF AMERICAN REPORTS ON TAXATION.

1. Report of the Committee appointed by the General Assembly [of Connecticut] to inquire into the subject of Taxation. New Haven, 1844.
2. Report on the State Assessment Laws by the Joint Select Committee appointed by the Legislature of 1862 [of New York]. Published as appendix to Street, A Digest of Taxation in the States. Albany, 1863.
3. Report of the Auditor-General, Secretary of the Commonwealth, and State Treasurer, on the Tax Laws of the State [of Pennsylvania]. Harrisburg, 1867.
4. Report of Hon. Charles S. Ogden [and others] to the Legislature of New Jersey [on Taxation]. Trenton, 1868.
5. Report of the Special Commission [of Connecticut] on Taxation. New Haven, 1868.
6. Report of the Commissioners to revise the Laws for the Assessment and Collection of Taxes [in New York]. Albany, 1871.
7. Second Report of the Commissioners to revise the Laws for the Assessment and Collection of Taxes in the State of New York. Albany, 1872.
8. Report of the Treasurer and Auditor [of Virginia] to the House of Delegates on the subject of Taxation. Richmond, 1874.
9. Report of the Joint Special Committee on the subject of Property liable to and exempt from Taxation, made to the General Assembly of the State of Rhode Island. 1875.
10. Report of the [Massachusetts] Commissioners appointed to inquire into the Expediency of revising and amending the Laws relating to Taxation and Exemption therefrom. Boston, 1875.
11. Report to the Legislature of New Hampshire of Hon. George Y. Sawyer, Chairman of the Board of Commissioners to revise . . . the Tax Laws of the State, *etc.* Concord, 1876.
12. Report of the Special Tax Commission of the State of New Jersey. New Brunswick, 1880.
13. Report of the Special Commission [of Connecticut] to inquire into the Conditions and Workings of the Tax Laws. New Haven, 1881.
14. Decisions, Opinions and Statistics compiled by the Tax Commission with their Report. Presented to the legislative Joint Tax Committee of New York. 3 Parts. Albany, 1881.
15. West Virginia Tax Commission. Preliminary Report. Wheeling, 1884.
16. West Virginia Tax Commission. Final Report. Wheeling, 1884.

17. Report of the Revenue Commission [of Illinois]. Springfield, 1886.
18. Report of the Board of Commissioners of Assessment and Taxation in the State of Oregon. Salem, 1886.
19. Report of the Tax Commission of Baltimore. Baltimore, 1886.
20. Report of the Special Commission on the subject of Taxation [in Connecticut]. New Haven, 1887.
21. Report of the Maryland Tax Commission to the General Assembly. Baltimore, 1888.
22. Report of Special Committee of the Boston Executive Business Association on Taxation. Boston, 1889.
23. Report of the Revenue Commission appointed by the . . . Legislature of Pennsylvania. Philadelphia, 1890.
24. Report of the Special Tax Commission of Maine. Augusta, 1890.
25. Preliminary Report of the [New Jersey] Commission on Taxation. Trenton, 1891.
26. Report of the [Oregon] Special Senate Committee on Assessment and Taxation. Salem, 1891.
27. Report of the [Boston] Special Commission on Taxation. Boston, 1891.
28. Report of the [United States] Select Committee to investigate Tax Assessments in the District of Columbia. Washington, 1892.
29. Report of the Revenue Commission of the State of Iowa. Des Moines, 1893.
30. Report of the Delaware Tax Commission to the General Assembly. 2 parts. Wilmington, 1893.
31. Report of the Tax Commission of Ohio. Cleveland, 1893.
32. Report of the [New York] Joint Committee of the Senate and Assembly relative to Taxation for State and Local Purposes. With Testimony. New York, 1893.
33. Report of Counsel to revise the Tax Laws of the State of New York. Albany, 1893.
34. Hearings before the [Massachusetts] Joint Special Committee . . . relating to Taxation. Boston, 1893.
35. A Full Report of the [Massachusetts] Joint Special Committee on Taxation. Boston, 1894.
36. Reports to [and by] the Tax Conference of Pennsylvania Interests, 1892–1895.
    (1) Report of the Committee appointed . . . to examine the Tax Laws of other American States and report an Opinion for or against the governing Principles embraced therein [1892].
    (2) Valuation, Taxation and Exemption in the Commonwealth of Pennsylvania. A Report by the Commission on Valuation and Taxation. Joseph D. Weeks, Chairman. Harrisburg, 1892.

(3) Report of the Commission on Valuation and Taxation [1893].
(4) Valuation and Taxation of Railroads in Pennsylvania. Harrisburg, 1893.
(5) Selling Price, Assessed Valuation and Taxation of Real Estate in Pennsylvania [1893].
(6) Minor Reports on Street Railroads, Canal Companies and Mortgage Indebtedness [1893].
(7) The Niles Tax Bill. An Analysis of its Provisions. By the Chairman of the Tax Conference. 1893.
(8) Effect of the proposed Revenue Bill on the State Revenues. By Joseph D. Weeks, Chairman of the Tax Conference. 1895.
(9) An Analysis of the Revenue Bill. By C. Stuart Patterson, a member of the Tax Conference. 1895.
(10) Speech of C. Stuart Patterson on the Taxation of Railroads. 1895.

37. Report of the Committee of the Chamber of Commerce of Chattanooga on Assessments and Taxation. Chattanooga, 1895.
38. Report of the Special Committee on Taxation of the Cleveland Chamber of Commerce. Cleveland, 1895.
39. Eighth Biennial Report of the Bureau of Labor Statistics of Illinois. Subject: Taxation. 1894. Second ed. Springfield, 1896.
40. Twelfth Annual Report of the Bureau of Labor Statistics of the State of Connecticut. [Devoted to taxation.] Meriden, 1896.
41. Ninth Biennial Report of the Bureau of Labor Statistics of Illinois. Subject: Franchises and Taxation. 1896. Springfield, 1897.
42. Report of the Commission appointed to inquire into the expediency of revising and amending the Laws of the Commonwealth [of Massachusetts] relating to taxation. Boston, 1897.
43. Report of the Commission appointed by Governor Griggs to investigate the Subject of Taxation in the State of New Jersey. Trenton, 1897.
44. Report of the Wisconsin State Tax Commission. Madison, 1898.
45. Report of the [Texas] Tax Commission to inquire into the system of Laws and Regulations now in force affecting the raising of Public Revenues and the disbursement thereof, etc., etc. Austin, 1899.
46. Report to the Legislature of New York by the Joint Committee on Taxation. [Albany], 1900.

INDEX